(21)

Supreme Court, U.S.
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No. 01-521

In The

Supreme Court of the United States

REPUBLICAN PARTY OF MINNESOTA, et al.,

Petitioners,

v.

VERNA KELLY, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

JOINT APPENDIX
VOLUME I, PAGES 1 TO 244

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Petition For Certiorari Filed September 24, 2001
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January 17, 2002

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James Bopp, Jr., Thomas J. Marzen, and Richard E. Coleson are Counsel for the following Petitioners: Republican Party of Minnesota, Indian Asian American Republicans of Minnesota, Republican Seniors, Young Republican League of Minnesota, Minnesota College Republicans, Muslim Republicans, Minnesota African-Amerian Republican Council, Cheryl L. Wersal, Mark E. Wersal, Corwin C. Hulbert, and Michael Maxim.

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February 27, 1998 – Plaintiff's Motion for temporary restraining order.

March 9, 1998 – Memorandum Opinion and Order that Plaintiff's motion for a temporary restraining order and/or for preliminary injunctive relief is denied.

September 3, 1998 – Plaintiff's second Amended Complaint.

September 28, 1998 – Edward J. Cleary and Charles E. Lundberg's Answer to Second Amended Complaint.

October 5, 1998 – Verna Kelly's Answer to Second Amended Complaint.

March 12, 1999 – Plaintiff's Motion for Summary Judgment.

March 16, 1999 – Defendants Charles E. Lundberg and Edward J. Cleary's Motion to Dismiss and Motion for Summary Judgment.

March 16, 1999 – Hon. Charles Flynn's Motion for Summary Judgment.

September 13, 1999 – Memorandum Opinion and Order of District Court entered, granting Defendants' Motion for Summary Judgment.

September 14, 1999 – Amended Memorandum Opinion and Order of District Court entered, granting Defendants' Motion for Summary Judgment.

October 12, 1999 – Plaintiffs' Notice of Appeal to the Eighth Circuit by Republican Party of Minnesota, Indian

Asian American Republicans of Minnesota, Republican Seniors, Young Republican League of Minnesota, Minnesota College Republicans, Minnesota African American Council, Cheryl L. Wersal, Mark E. Wersal and Corwin C. Hubert entered.

October 12, 1999 – Plaintiffs' Notice of Appeal to the Eighth Circuit by Michael Maxim entered.

October 13, 1999 – Plaintiffs' Notice of Appeal to the Eighth Circuit by Kevin J. Kolosky, Campaign for Justice and Gregory F. Wersal entered.

November 17, 1999 – Civil case docketed at Eighth Circuit.

April 30, 2001 – Opinion of Eighth Circuit filed.

April 30, 2001 – Judgment of the District Court affirmed.

June 26, 2001 – Eighth Circuit Order denying Petition for Rehearing with Petition for Rehearing En Banc.

September 24, 2001 – Petition for writ of certiorari filed.

October 3, 2001 – U.S. Supreme Court Notice filed that petition for writ of certiorari was filed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

VERNA KELLY, et al.,

Defendants.

Case No. 68-831

AFFIDAVIT OF GREGORY F. WERSAL

(Filed Feb. 27, 1998)

GREGORY F. WERSAL, first being duly sworn and upon oath, deposes and states as follows:

1. I am a 42 year-old husband and father. My wife is Cheryl Wersal. I have a brother named Mark Wersal.

2. I am a lawyer licensed to practice in the State of Minnesota and residing in the State of Minnesota.

3. I was admitted to practice before Minnesota state courts in 1980. I was an unsuccessful candidate for the office of Associate Justice of the Minnesota Supreme Court in 1996. I am a candidate for the office of Associate Justice of the Minnesota Supreme Court in the primary and general elections of 1998. My campaign committee is called Campaign for Justice. Mark Wersal is the chairman of Campaign for Justice.

4. A true and correct copy of the current Republican Party of Minnesota Constitution is attached hereto as Exhibit A.

5. In my 1996 campaign, my supporters and I did the following things on behalf of my campaign:

- attended numerous gatherings of the Republican Party of Minnesota and its Affiliated Associations
- distributed campaign literature at gatherings of the Republican Party of Minnesota and its Affiliated Associations
- spoke at numerous gatherings of the Republican Party of Minnesota and its Affiliated Associations
- sought endorsements from the Republican Party of Minnesota and its Affiliated Associations

True and correct copies of campaign literature distributed on my behalf are attached hereto as Exhibit B.

6. In 1996, an ethical complaint was filed against me with the Office of Lawyers Professional Responsibility. A true and correct copy of the Complaint is attached hereto as Exhibit C and incorporated herein by reference.

7. The Office of Lawyers Professional Responsibility on June 13, 1996, determined that sanctions against me were not warranted. A true and correct copy of the Determination that Discipline is Not Warranted is attached hereto as Exhibit D and is incorporated herein by reference. I was not aware of the Complaint filed against me until my receipt of the Determination from the Office of Lawyers Professional Responsibility.

8. In the summer of 1996, I withdrew as a candidate for Associate Justice as a result of the Complaint filed against me with the Office of Lawyers Professional Responsibility and the risk that further Complaints

would be filed against me and thereby jeopardize my ability to practice law.

9. A true and correct copy of the relevant portion of the May, 1997 Minnesota State Bar Association Judicial Elections Task Force Report and Recommendations is attached hereto as Exhibit E and is incorporated herein by reference.

10. In January of 1997, I announced my intention to be a candidate for Associate Justice in the primary and general elections of 1998.

11. Spurred on by the MSBA recommendation that judicial candidates be permitted to make general solicitations of campaign contributions, I wrote a request to the Office of Lawyers Professional Responsibility in June, 1997 for an advisory opinion. A true and correct copy of the correspondence is attached hereto as Exhibit F and is incorporated herein by reference.

12. The Office of Lawyers Professional Responsibility responded to my request for an advisory opinion. A true and correct copy of the response is attached hereto as Exhibit G and is incorporated herein by reference.

13. From January of 1997 until December 23, 1997, I participated in the activities listed in paragraph 4. True and correct copies of campaign literature for the 1997-1998 campaign are attached hereto as Exhibit X and are incorporated herein by reference.

14. During the summer of 1997, I corresponded with members of the RPM regarding my constitutional rights to attend and speak at gatherings of the RPM. True and correct copies of this correspondence are attached

hereto as Exhibits H and I and are incorporated herein by reference.

15. In September of 1997, the Board on Judicial Standards submitted a petition to amend the Code of Judicial Conduct to the Minnesota Supreme Court. A true copy of this correspondence is attached hereto as Exhibit J and is incorporated herein by reference.

16. The Minnesota Supreme Court issued an Order for a Hearing to Consider Proposed Amendment to the Code of Judicial Conduct. A true and correct copy of the Order is attached hereto as Exhibit K and is incorporated herein by reference. I subsequently filed an informal motion for all justices who stood for election in 1996 and those standing for election in 1998 to recuse themselves from the proceedings. A true and correct copy of the September 15, 1997 informal motion is attached hereto as Exhibit L and is incorporated herein by reference. The Minnesota Supreme Court issued an Order stating recusal was a matter for each individual justice to decide. A true and correct copy of the Order is attached hereto as Exhibit M and is incorporated herein by reference. In the only other Order in the file on the issue, Justice Esther M. Tomljanovich, a judicial candidate for reelection in 1998, declined to recuse. A true and correct copy of the Order is attached hereto as Exhibit N and is incorporated herein by reference.

17. A true and correct copy of the remarks of the Executive Secretary of the Board on Judicial Standards is attached hereto as Exhibit O and is incorporated herein by reference.

18. A true and correct copy of the remarks of Minnesota District Judge Gary J. Meyer is attached hereto as Exhibit P and is incorporated herein by reference.

19. A true and correct copy of the remarks of the Minnesota Bar Association is attached hereto as Exhibit Q and is incorporated herein by reference.

20. A true and correct copy of the remarks of former judicial candidate Bruce A. Peterson is attached hereto as Exhibit R and is incorporated herein by reference.

21. I filed a memorandum with the court noting the unconstitutionality of the proposed changes to the Code of Judicial Conduct. A true and correct copy of the memorandum is attached hereto as Exhibit S and is incorporated herein by reference.

22. On December 23, 1997, the Minnesota Supreme Court amended the Code of Judicial Conduct ("Code"). Canon 5 of the Code now reads in relevant part:

- "[A] candidate for election to judicial office shall not . . . attend political gatherings" or "speak to . . . political organization gatherings, on his or her own behalf." Code, Canon 5 A (1), B (1).
- "A candidate for judicial office . . . shall not . . . announce his or her view son disputed legal or political issues" Code, Canon 5 A (3).
- "A candidate for election to judicial office shall not . . . identify themselves as members of a political organization, except as necessary to vote in an election." Code, Canon 5 A (1).
- "A candidate for election to judicial office shall not . . . seek, accept or use endorsements from a political organization. A candidate may

. . . establish committees to conduct campaigns for the candidate . . . Such committees . . . shall not seek, accept or use political organization endorsements." Code, Canon 5 A (1), B (2).

- "A judicial candidate shall not personally solicit- . . . campaign contributions." Code, Canon 5 B(2).

- [In reference to the above Code provisions only:] "A candidate for judicial office . . . (a) . . . shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate; (b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon; (c) . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon." Code, Canon 5 A (3).

A true and correct copy of the Order is attached hereto as Exhibit T and is incorporated herein by reference.

23. The Code, as amended on December 23, 1997, now prohibits me and others from the following activities if I don't want a complaint filed against me with the Office of Lawyers Professional Responsibility:

- attending gatherings of the Republican Party of Minnesota and its Affiliated Associations

- distributing campaign literature at gatherings of the Republican Party of Minnesota and its Affiliated Associations

- speaking at gatherings of the Republican Party of Minnesota and its Affiliated Associations

- announcing that I am in favor of strict construction of the Constitution and am critical of certain decisions of the Minnesota Supreme Court

- identifying myself as a lifelong member of the Republican Party of Minnesota

- seeking endorsement from the Republican Party of Minnesota and its Affiliated Associations

- soliciting campaign contributions

24. After the Order was issued on December 23, 1997, I, on the advice of counsel, did not do the activities listed in paragraph 24 due to my concern that the Lawyers Professional Responsibility Board, the Office of Lawyers Professional Responsibility, and the Board on Judicial Standards may sanction me for such activities. A list of the meetings where I was scheduled to speak but did not attend because of the Code's ban is attached hereto as Exhibit Y and is incorporated herein by reference.

25. After the Order was issued on December 23, 1997, the members of CFJ, on the advice of counsel and my direction, halted the activities listed in paragraph 24, except for soliciting campaign contributions, due to my concern that the Lawyers Professional Responsibility Board, the Office of Lawyers Professional Responsibility, and the Board on Judicial Standards may sanction me for such activities.

26. After the Order was issued on December 23, 1997, I, on the advice of counsel, discouraged family members, prohibited my employees, discouraged officials

and employees under my direction and control, and avoided knowingly permitting any other person to conduct the activities listed in paragraph 24, except for CJF members soliciting campaign contributions. I took these steps due to my concern that the Lawyers Professional Responsibility Board, the Office of Lawyers Professional Responsibility, and the Board on Judicial Standards may sanction me for such activities.

27. I sought further clarification of the Code's ban by soliciting an advisory opinion from the Office of Lawyers Professional Responsibility on February 9, 1998 and February 17, 1998. True and correct copies of my correspondence are attached hereto as Exhibits U and V and are incorporated herein by reference. I requested this advisory opinion in order to determine how to proceed with my campaign prior to the precinct caucuses which will be held on March 3, 1998.

28. A true and correct copy of the February 24, 1998 advisory opinion of the Office of Lawyers Professional Responsibility is attached hereto as Exhibit W and is incorporated herein by reference.

29. I wish to undertake the activities referenced in paragraph 24 on my own behalf at the March 3, 1998 precinct caucuses and subsequent gatherings of the Republican Party of Minnesota and the Affiliated Associations. However, I will not undertake these activities until I have a court order or changes in the Code indicating that I will not be subject to sanctions if I do.

30. As each gathering of the Republican Party of Minnesota and the Affiliated Associations passes by without such an order or changes to the Code, I am irreparably harmed with respect to my free speech and associational rights by the unconstitutional provisions of the Code.

31. A true and correct copy of an article published by the *Star Tribune* on February 26, 1998, is attached hereto as Exhibit Z and is incorporated herein by reference.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: 2-27-1998

/s/ Gregory F. Wersal
GREGORY F. WERSAL

Subscribed and sworn to before me
this 27th day of February, 1998.

/s/ Erick G. Kaardal
Notary Public

[SEAL] ERICK G. KAARDAL
Notary Public – Minnesota
MY COMMISSION EXPIRES 1-31-00

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Affidavit of Gregory F. Wersal Filed February 27, 1998

[———]* OFFICES, P.A.
[———]
[———] • MINNEAPOLIS, MINNESOTA 55[———]
TELEPHONE (612) [———] • FAX (612) [———]

[———]
[———]
[———]

[———]
OF COUNSEL
[———]
LEGAL ASSISTANT

May 22, 1996

Mr. Pat Burns
Lawyer Professional Responsibility Board
25 Constitution Avenue
St. Paul, MN 55155

Re: Complaint against Greg Wersal

Dear Mr. Burns:

As you will recall I spoke with you briefly on May 20th concerning possible professional misconduct by an attorney who is an announced candidate for the office of Justice of the Minnesota Supreme Court. Because of the office being sought, I first contacted the Board on Judicial Standards and was informed that, because Mr. Wersal is not presently a judge, the appropriate place to file a potential complaint was with the L.P.R.B. Please construe

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*Indicates various amounts of copy struck through in the original.

this letter to be a complaint consistent with the requirements of Rule 8.3 (a).

The reason for this complaint is my direct observation of the personal campaign activities of Mr. Greg Wersal, an attorney practicing in Hennepin County. I do not know Mr. Wersal personally, nor have I met, or had any professional dealings, with him. My observations are from attendance at a political gathering, and from correspondence, copies of which I have enclosed, which his committee sent to my wife, who is a Republican Party officer.

I was a delegate at the Republican [———] Congressional District convention, at which time numerous candidates for partisan office appeared seeking support of the delegates to that convention. [———].

During the course of candidate appearances that evening, I was surprised when Mr. Wersal appeared on behalf of his candidacy for Supreme Court Justice. He asked for the active involvement of the Republican party in his candidacy but did not seek endorsement of the party that evening. It was very clear to me, however, that he was seeking partisan support for his candidacy.

I have been involved in the Republican party for over 40 years and have been a delegate to many conventions. In my memory that was the first time that I ever heard a candidate for judicial office, especially the highest judicial office in the state, come before a party convention to seek support. My recollection especially was that appearance may have been a violation of the judicial code, but since no endorsement took place, I did not file a complaint.

Recently, my wife received the enclosed documents which I read carefully and in more detail than when I listened to Mr. Wersal's speech before the convention. I have enclosed copies of the materials received by my wife. You will note that the initial document is mailed to "Dear BPOU Chair." That is a Basic Political Organization Unit. She is the Republican Chair for [———] in [———]. Please note that the document sent to her speaks on behalf of Mr. Wersal's campaign committee, seeks endorsement from the upcoming state Republic convention in Duluth, and makes note of the fact that Mr. Wersal personally would be happy to attend district meetings as a speaker.

I believe the comments attributed to Mr. Wersal personally, and his appearance at the [———] District Republican Convention and proposed appearance at the state Republic convention, violates Canon 5A, (1), (d). While Mr. Wersal is not a judge, Rules of Professional conduct 8.2(b) mandates that a lawyer candidate for judicial office must comply with the appropriate provisions of the judicial conduct code.

I have not commented on Mr. Wersal's addressing of issues which may come before the Court to which he seeks election, but I feel those are inappropriate as well. I consider the most visible violations to be his appearance at partisan conventions and the seeking of partisan endorsement for the non partisan position. If additional information is required, I will attempt to furnish it to you, although I've had no further contact with Mr. Wersal, or

his campaign committee, other than what I have included in this letter.

Very truly yours,

[———] OFFICES, P.A.
[———]
[———]
[———]

[———]/ask

Enclosures

cc: Mr. Paul Willette
Board on Judicial Standards
2025 Centre Pointe Blvd.
Suite 420
Mendota Heights, MN

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Affidavit of Gregory F. Wersal Filed February 27, 1998

In the Matter of the Complaint of
[———]
[———]
[———]
against GREGORY F. WERSAL,
an Attorney at Law of the State of Minnesota.

DETERMINATION THAT DISCIPLINE IS NOT WARRANTED

TO: Complainant and the Respondent Attorney Above-Named:

Based upon the documents submitted by the complainant, the Director has decided not to investigate the complaint. Therefore discipline is not warranted pursuant to Rule 8(d)(1), Rules on Lawyers Professional Responsibility. The reasons for this decision are as follows:

Respondent is an announced candidate for associate justice to the Minnesota Supreme Court in this fall's judicial elections. Complainant's complaint arises out of respondent's conduct at the Republican [———] Congressional District Convention and campaign materials sent by respondent's campaign committee to complainant's wife who is the Republican [———] Minnesota. Complainant alleges that respondent's appearance at the [———] District Republican Convention and a proposed

appearance at the State Republican Convention in Duluth violates Canon 5A(1)(d) of the Minnesota Code of Judicial Conduct as it is applied to lawyers who are judicial candidates through Rule 8.2(b), of the Minnesota Rules of Professional Conduct. Complainant also alleges that respondent's conduct in addressing issues which may come before the court in his campaign literature is "inappropriate as well."

Appearance at the Republican Conventions

Canon 5A(1)(d) provides:

> Except as authorized in section 5B(1), a judge or candidate for election to judicial office shall not attend political gatherings.

Canon 5B(1)(a) permits judicial candidates to "speak to gatherings on his or her own behalf." Canon 5B(1)(a) refers to "gatherings" as opposed to "political gatherings." While "political organization" is defined in the Comments to Canon 5, there are no definitions or explanations of either "political gatherings" or "gatherings," nor is there any indication whether "gatherings" include "political gatherings." However, "gatherings" has been interpreted elsewhere to include "political gatherings," provided the candidate is there to speak on his or her own behalf. *See e.g.*, McFadden, *Electing Justice: The Law and Ethics of Judicial Election Campaigns*, American Judicature Society (1990)[1]. *See also* Missouri Commission on

[1] This publication is used by the Minnesota Board on Judicial Standards and its Executive Director in advising judicial candidates on proper campaign conduct. At page 103

Retirement, Removal and Discipline, *Opinion 31* (undated) (in which a judicial candidate was advised that he could attend political gatherings but that his activities should be confined to speaking on his own behalf). Because the Minnesota Judicial Code of Conduct does not address this issue and because others have interpreted gatherings to include "political gatherings," the Director doubts she could establish by clear and convincing evidence that the Canon prohibits respondent's attendance at the conventions and that the Canon provides sufficient notice to respondent that his attendance was prohibited even if the Court's intent in promulgating this Canon was to prohibit candidates from attending and speaking at "political gatherings."

Soliciting Party Endorsement

Canon 5B(2) prohibits a candidate from "personally" soliciting publicly stated support. The rule further provides, however, that the candidate may establish committees to conduct campaigns and to obtain public statements of support for his or her candidacy. According to complainant, respondent did not personally request the endorsement of the republican party when he attended the [———] District Convention. Moreover, the literature sent to complainant's wife as [———] was sent by a committee which appears to be entitled "Campaign for Justice." The letter was sent by respondent's brother

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McFadden includes a chart indicating that speaking at political gatherings is sometimes permitted. This entry is footnoted to indicate that such conduct is permitted provided the judge is a candidate for election and only speaks on his or her own behalf.

and law partner who appears to have some relationship to the committee. Although the letter clearly requests that the republican party endorse respondent for Associate Justice to the Minnesota Supreme Court, the Minnesota Judicial Code of Conduct does not prohibit campaign committees from soliciting such support or such endorsements.

Announcing Views on Disputed Legal or Political Issues

Complainant also raises the issue of respondent's statements made in his "campaign for justice" about three Minnesota Supreme Court decisions. Canon 5A(3)(d)(i) prohibits candidates from announcing their views on disputed legal or political issues.

The current prohibition contained in Minnesota Canon 5A(3)(d)(i) is identical to Canon 7B(1)(c) of the prior ABA Code of Judicial Conduct (1972 version). The parallel provision of current ABA Model Code of Judicial Conduct (1990 version) does not contain a blanket prohibition against announcing views on disputed issues. Instead, the current ABA provision prohibits "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court." The ABA adopted the 1990 version out of concern over the constitutionality of the 1972 version. Although adoption of the 1990 version was proposed to the Minnesota Supreme Court in June 1994 by the Minnesota Advisory Committee to review the American Bar Association Model Code of Judicial Conduct, it was not adopted by the Minnesota Supreme Court.

Attached as Exhibit A is a summary and comparison of court decisions concerning cases involving the announcing of personal views on disputed issues. the decisions interpreting the 1972 version[2] have found it to be unconstitutional in four of six cases. Moreover, in the *Stretton* decision, the circuit court only found the 1972 version constitutional by reading into the Canon the additional limiting language contained in the 1990 version about *committing or appearing to commit* the candidate with respect to cases, controversies or issues that are likely to come before the court.

The statements in respondent's campaign literature are indeed critical of three Minnesota Supreme Court decisions. However, candidates are not prohibited from criticizing incumbents provided the criticism is truthful and does not bring the impartiality of judiciary into question. *See e.g., In re Baker,* 542 P.2d 701 (Kan. 1975) (candidate permitted to note incumbent judge's health and the delays and increased costs it had caused to the county); *Bundlie v. Christensen,* 276 N.W.2d 69 (Minn. 1979) (candidate could criticize incumbent by pointing out that county's court reporting expenses were higher than in surrounding counties). *See also* State Bar of Michigan Comm. On Legal Ethics and Professional Conduct, *Formal Opinion C-227* (1982) (ethics committee advised candidate for appellate court that candidate could criticize earlier opinion of the appellate court and the legal philosophy underlying that opinion).

The Director's Office has doubts about the constitutionality of the current Minnesota Canon and its

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[2] Which is identical to the current Minnesota Canon 5A(3)(d)(i).

application to respondent's statements. In addition, the Director doubts she would be able to prove by clear an [sic] convincing evidence that the statements in respondent's campaign materials constitute an announcement of his views on the issues of crime, welfare or abortion, let alone that they appear to commit respondent with respect to any of these three issues. For these reasons the Director has determined that discipline is not warranted.

NOTICE OF COMPLAINANT'S RIGHT TO APPEAL

If the complainant is not satisfied with this decision, an appeal may be made by notifying the Director in a letter postmarked no later than fourteen (14) days after the date of this notice. The letter of appeal should state the reason(s) why the complainant disagrees with the decision. An appealed decision will be reviewed by a designated Lawyers Professional Responsibility Board member, whose options are limited to (1) approving this decision or (2) requiring further investigation. This determination will generally be based upon the information which is already contained in the file.

Enclosed with this notice to the respondent attorney is a copy of complainant's complaint.

Dated: June 13, 1996.

/s/ Marcia A. Johnson
MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF
LAWYERS PROFESSIONAL
RESPONSIBILITY
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(612) 296-3952

Exhibit A

COMPARISON OF COURT DECISIONS CONCERNING CANONS WHICH REGULATE JUDICIAL CAMPAIGN SPEECH

Case Name	Canon Version	Court	Conduct
Stretton (1991) 944 F.2d 137	1972	3rd Cir version	Wanted to announce views on right to privacy, criminal victims rights, meaning of reas doubt, and minorities in jury selection. Upheld rule.
Berger (1984) 598 F.Supp 69	1972	S.D. OH	To announce plans for reformed family law court and pledge more active role in case administration. Upheld rule.
Buckley (1993) 997 F.2d 224	1972	7th Cir modified	Candidate wished to announce his views about abortion and capital punishment. *Struck down* enitre [sic] rule.
Beshear (1991) 773 F.Supp. 1229	1972	E.D. AR	Judge had said during campaign that plea bargainning [sic] in his courtroom was unacceptable. *Struck down* rule, but later rev bcz ct w/o jurisdiction.

ALCU v. Fla Bar (1990) 774 F.Supp. 1094	1972	N.D. FL	Candidate wanted to criticize conduct of incumbent judge. *Struck down* rule.
J.C.J.D. v. R.J.C.R. (1990) 803 S.W.2d 953	1972	KY Sup	Judge had criticized during campaign "fireman's rule", law agst felons with handguns, workers comp std of review. *Struck down* rule & vacated judge's 3 month suspension.
Ackerson (1991) 776 F.Supp. 309	1990	W.D. KY version	*Struck down* rule to extent it prohibited pledges re court efficiency and administration. *Upheld* rule as to statements which appeared to commit atty on legal and policy issues, one of which was right to privacy.
Deters v. Jud Bd (1994) 873 S.W.2d 200	1990	KY Sup	Judge had announced during campaign that he was a Pro-Life Candidate. The 1990 rule was *upheld* and the public censure imposed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Affidavit of Gregory F. Wersal Filed February 27, 1998

February 9, 1998

Edward Cleary
Director of the Office of Lawyers
Professional Responsibility
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500

Dear Mr. Cleary:

I am an announced candidate for the Minnesota Supreme Court. The Minnesota Supreme Court recently amended Canon 5 of the Code of Judicial Conduct to prohibit judicial candidates from speaking to political party organizations and prohibiting their campaign committees from seeking, accepting, or using political party endorsements. These are substantial changes to the way judicial elections will be conducted in Minnesota. I believe these changes are unconstitutional violations the candidate's right to free speech and the campaign committee's right to freedom of association. I wish to know whether your office intends to enforce these new rules.

Back in 1996, a complaint was filed against me as a candidate for the Minnesota Supreme Court. Marcia Johnson issued a Determination that Discipline is Not Warranted on June 13, 1996. A copy of that decision is attached. In her Determination, Ms. Johnson stated "the Director's Office has doubts about the constitutionality of the current Minnesota Canon and its application to respondent's statements." Also attached to her decision a

comparison of numerous court decisions striking down language and judicial codes which prohibited judicial candidates from stating their views on disputed legal or political issues.

The new Canon 5 which became effective January 1, 1998, not only contains the prohibition against judicial candidates from announcing their views on disputed legal and political issues; it states that the judicial candidate can not express *any* opinion or view to certain groups of people, i.e., political party members.

The very cases cited by Ms. Johnson in her Determination that Discipline is Not Warranted specifically stand for the proposition that a state regulation unnecessarily burdens the exercise of free speech when it prohibits *all* speech that a candidate may want to give. If your office had doubt about the constitutionality of Canon 5 prior to these changes, it must also have doubts about the new Canon 5 which restrict free speech even more drastically.

As a result of the new Canon 5 I have had to cancel numerous speeches which I was scheduled to give at political party gatherings. I have been advised to sue in U. S. District Court; however, before taking that step I have decided to contact your office. I want to know what position your office will take on the following specific issues:

1) Does your office intend to enforce the prohibition against judicial candidates speaking on their own behalf to political party organization gatherings?

2) Does your office intend to enforce the prohibition against a judicial candidate's campaign committee from

seeking, accepting, or using endorsements from a political party organization?

3) Does your office intend to enforce the prohibition against a judicial candidate announcing his or her views on disputed legal or political issues?

I have attached the memorandum I prepared for the Supreme Court on these issues. I look forward to your prompt response.

Yours truly,

Gregory F. Wersal

GFW/bmh
Enclosures

Wersal Law Office, P.A.
[Address Omitted In Printing]

February 17, 1998

Edward Cleary
Director of the Office of Lawyers
Professional Responsibility
25 Constitution Ave, Suite 105
St. Paul, MN 55155-1500

Dear Mr. Cleary:

This letter is a follow up to our phone conversation of February 17, 1998. At that time, you stated your office would be responding to my letter of February 9, 1998, but that you wanted an opportunity to do research and respond. When I asked you to tell me how long this could take, you were unwilling to give me a specific time and

stated it would be "a couple of weeks". We also discussed the fact that whatever your office decides it may be of limited value because if a complaint were filed against me for violating Canon 5, any decision your office may make at that time could be appealed by the complainant to the next level which could decide that my conduct was unethical and that some sanction should apply.

You noted in our conversation that the issue of restrictions on the speech of judicial candidates was a matter of some discussion nationally. So I would assume you have already had some exposure to the legal issues involved. In addition, two members of your staff attended oral arguments in front of the Minnesota Supreme Court when these rule changes were being considered. At that hearing I clearly stated that I was a candidate for the Minnesota Supreme Court, that I had spoken at numerous political meetings and conventions, and that I believed the proposed rules were unconstitutional infringements of free speech and freedom of association. The fact that your office had two members in attendance tell me that you were already committing resources to these issues. It has now been three months since that hearing and two months since the new rules have taken effect.

I need a prompt response to my previous letter. I need a response from you by February 24, 1998. I need a response from you be then so that I will have sufficient time to contact the various precinct chairs so that I might attend and speak at the political party precinct caucuses which are scheduled for March 3, 1998.

I look forward to hearing from you. You may fax your decision to me at 545-4851 to speed up this process.

Yours truly,

/s/ Gregory F. Wersal/bmh
Gregory F. Wersal

GFW/bmh

OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY
[Address And Names Omitted In Printing]

February 24, 1998

Mr. Gregory F. Wersal
P.O. Box 26186
Minneapolis, MN 55426

VIA FAX
#545-4851

RE: Letters of February 9 and February 17, 1998

Dear Mr. Wersal:

On February 9, 1998, you sent a letter to my attention as Director of the Office of Lawyers Professional Responsibility framing three questions as it regards the most recent version of Canon 5 effective January 1, 1998, by order of the Minnesota Supreme Court. You indicated "that I have had to cancel numerous speeches which I was scheduled to give at political party gatherings" because of the restrictions contained in Canon 5. In your follow-up letter of February 17, 1998, you set an arbitrary response date of February 24 on the part of this Office "so that I will have sufficient time to contact the various

precinct chairs that I might attend and speak at the political party precinct caucuses which are scheduled for March 3, 1998." the questions were as follows:

1. Does your office intend to enforce the prohibition against judicial candidates speaking on their own behalf to political party organization gatherings?

Since you have provided us enough facts regarding your intention to attend political gatherings and caucuses, we have enough information to issue an advisory opinion as to the proposed conduct.

Canon 5A(1)(d) provides:

> Except as authorized in section 5B(1), a judge or a candidate for election to judicial office shall not:
>
> (d) attend political gatherings; or seek, accept or use endorsements from a political organization.

Canon 5B(1) states, in part:

> A judge or a candidate for election to judicial office may, except as prohibited by law,
>
> (a) speak to gatherings, other than political organization gatherings, on his or her own behalf.

Canon 5D defines political organization as: "a political party organization."

Prior to the recent amendments to Canon 5, the previous Director of this Office had indicated her doubts to you that she could establish by clear and convincing evidence that this section of the Canon prohibited a candidate's attendance at political gatherings "even if the Court's

intention in promulgating this Canon was to prohibit candidates from attending and speaking at 'political gatherings.' " The ambiguity formerly found in this section of Canon 5 has now been removed and the intent of the Court is clear as it regards a ban on judicial candidates speaking to political party organization gatherings.

The State of Minnesota has a compelling interest in the integrity and impartiality of the bench. *See Landmark Communications, Inc. v. Virginia,* 435 U.S. 829, 848 (1978). Restrictions designed to address this compelling state interest at times conflict with other critical components of our constitutional framework, including free speech and freely and vigorously contested elections. It is obvious that these interests are in conflict and consequently require balancing in order to arrive at a resolution. In allowing judges and judicial candidates to speak to any gathering except a political party organization gathering, the Minnesota Supreme Court has provided breathing room to those judicial candidates who wish to campaign.

The Court has chosen to specifically proscribe judicial candidates campaigning before political party organizations. Therefore, a licensed Minnesota attorney who speaks to a political party organization gathering in his role as a judge or judicial candidate would be in violation of 5B(1) and could be subject to professional discipline.

2. Does the Office intend to enforce the prohibition against a judicial candidate's campaign committee from seeking, accepting or using endorsements from a political party organization?

Canon 5A(1)(d) states that judges or candidates for election to judicial office shall not: "(d) attend political gatherings; or seek, accept or use endorsements from a political organization" (defined in 5D as a political party organization). 5B(2) prohibits campaign committees from seeking, accepting or using political organization endorsements (denoting political party organization endorsements).

As noted above, the Minnesota Supreme Court has made the determination that licensed Minnesota attorneys that are judges or candidates for judicial office shall not engage in the type of activity that you propose nor allow their campaign committee to be engaged in such activity. It is the belief of this Office that the balancing test referred to previously is met by the Supreme Court's decision to narrowly serve the highly compelling state interest of ensuring the integrity and impartiality of the judicial process by prohibiting the acceptance or use of political party organization endorsements by judges or judicial candidates.

3. Does your office intend to enforce the prohibition against a judicial candidate announcing his or her views on disputed legal or political issues."

Canon 5A(3)(d)(i) provides that judges and judicial candidates shall not, among other things, "announce his or her views on disputed legal or political issues."

In your letter of February 9, 1998, you make reference to the previous Director's determination that discipline was not warranted as it regarded a fact situation involving this provision. As noted in that earlier determination, "the parallel provision of current ABA Model Code of

Judicial Conduct (1990 version) does not contain a blanket prohibition against announcing views on disputed issues. Instead, the current ABA provision prohibits 'statements that commit or appear to commit that candidate with respect to cases, controversies or issues that are likely to come before the court."

Along with that determination you received a list of cases addressing the issue of the ability of judges and judicial candidates to announce personal views on disputed issues. While you have indicated to us that you intend to speak at political party gatherings thus giving us enough information to give you an advisory opinion as to questions number 1 and number 2, you have not specified what statement you would make that may or may not be a view on a disputed, legal or political issue,. However, this portion of the Canon was not addressed by the recent amendments issued by the Minnesota Supreme court on Canon 5 on January 1, 1998. As such, the Director's Office continues to have significant doubts as to whether or not this provision would survive a facial challenge to its constitutionality under the First Amendment to the Untied States Constitution. Therefore, our policy has not changed and unless the speech at issue violates other prohibitions listed in Canon 5 or other portions of the Code of Judicial Conduct, it is our belief that this section is not, as written, constitutionally enforceable.

The facts upon which this opinion is based have been supplied by you. We are not responsible for the application of this opinion to differing factual situations. It should not be interpreted as binding the Minnesota

Supreme Court or the Lawyers Professional Responsibility Board in any future disciplinary proceeding arising out of this or any other matter. Moreover, this opinion is not intended to bind or influence any trial court or other adjudicatory body concerning related legal issues.

Sincerely yours,

/s/ Edward J. Cleary
Edward J. Cleary
Director

tt

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Affidavit of Gregory F. Wersal Filed February 27, 1998

Greg Wersal
For Supreme Court

[Picture Omitted In Printing]

> "If our laws are to reflect the will of a self governing people, then we need to elect judges who will strictly construe the Constitution."
>
> Gregory Wersal

A NEW LEADER FOR MINNESOTA

Greg Wersal
For Supreme Court

Examples of Judicial Activism by the Minnesota Supreme Court:

CRIME: The court ruled that a criminal has a legal right to a more lenient sentence than established in law by the legislature.

WELFARE: The court ordered the state to pay welfare benefits in excess of those provided for by the legislature. The legislature should set our spending policies; not judges.

ABORTION: The court ordered the state must use welfare funds to pay for an abortion despite state law to the contrary. The dissenting judge remarked the court "abandons all vestige of neutrality" in its pro-abortion stance.

Greg Wersal believes we need judges who will:

1. strictly construe the constitution
2. Not legislate from the bench
3. Punish criminals, not establish new rights.

Personal Background

- Raised on a family farm in Redwood Falls
- Graduate of St. Johns University, summa cum laude and Univ. Of Minnesota Law School, cum laude
- Private practice of law since 1980
- Married 14 years, 2 children
- Member, St. Joseph's Catholic Parish in New Hope and Calvary Lutheran Church in Golden Valley.

Contact Greg at (612) 546-3513

Prepared and paid for by CAMPAIGN FOR JUSTICE
7841 Wayzata Blvd., Ste. 201, Minneapolis, MN 55426.
(612) 546-3513

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For Supreme Court

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VOTE
WERSAL
SUPREME COURT

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE

Year after year citizens exercise their right to vote for a Legislature that will protect them from crime, provide for taxes, and spend the money in programs for citizens. The Minnesota Supreme Court has issued decisions which are marked by their disregard for the Legislature and a lack of common sense.

CRIME: In June, 1994, the Minnesota Supreme Court ruled that an in-custody confession must be tape recorded or it would not be allowed into evidence. What this means is that a murderer's confession to police will not be used against him if the police did not tape record it. Should we conclude that because the Supreme Court does not trust police, it allows confessed criminals to go free?

WELFARE: In August, 1993, the Minnesota Supreme Court struck down, as a violation of the Constitutional right to travel, a state law that limited welfare benefits. The purpose of the law was to prevent people from moving to Minnesota only to collect the higher welfare benefits paid in this State. The Court should have deferred to the Legislature. It's the Legislature which should set our spending policies.

ABORTION: In January, 1996, the Minnesota Supreme Court ruled that a woman's right to privacy under the Minnesota Constitution means not only does she have a right to abortion, but that the State must use welfare funds to pay for it. This is directly contrary to the opinion of the U. S. Supreme Court. The idea that the State must pay for individuals to exercise their rights is almost unprecedented. The sole dissenting judge remarked the Court "abandons all vestige of neutrality" in its pro-abortion stance.

An Important Message From Greg Wersal

"This campaign is about creating a better future for ourselves, our children, and generations to follow. That's why I'm running for the Supreme Court, and that's why I need your support."

❒ **YES, Greg! I will support your campaign for the Supreme Court. Minnesota needs you on the Court. I want you to bring common sense and leadership to the Court. To further demonstrate my support for your candidacy, I've enclosed a campaign contribution in the amount of:**

❒ $25 ❒ $50 ❒ $100 ❒ $250 ❒ $500

❒ Other Amount $_____

❒ **Greg, I'd like to volunteer.**

A. I can distribute your campaign literature in my hometown.

B. I know a civic group that would like to hear you speak.

Contact me at _____

NAME

_____

PHONE

Make Checks Payable To
Campaign For Justice
7841 Wayzata Blvd.
Suite 201
Minneapolis, MN 55426

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE

Prepared and paid for by Campaign For Justice.
(612) 546-3513

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VOTE
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Affidavit of Gregory F. Wersal Filed February 27, 1998

Wersal Law Office, P.A.

[Address Omitted In Printing]

August 15, 1997

Dear Member of the Constitution Committee
of the Republican Party:

I have been provided with a copy of the letter from G. Barry Anderson to Chris Georgacas dated May 24, 1996. A copy of the letter is attached. I have been asked to respond to this letter. I will set out the various arguments presented in the letter by Mr. Anderson an my response.

1. Argument: The Code of Judicial Conduct prohibits a judicial candidate from *personally* soliciting publicly stated support.

   Response: Mr. Anderson only quotes part of Canon 5B(2). It is true that a *judicial candidate* can not ask for an endorsement; but the candidate's campaign committee can. Canon 5B(2) states, "Such committees may solicit and accept campaign contributions . . . and obtain public statements of support for his or her candidacy". The Office of Lawyers Professional Responsibility which is charged with prosecuting attorneys for ethical violations agrees with this interpretation. (Please see the Determination that Discipline is Not Warranted which is attached.)

2. Argument: The Code prohibits a candidate from attending political gatherings and, although there is an exception for a candidate to "speak at gathering"

there is no language specifically allowing a candidate to speak at "political gatherings". Had the Supreme Court intended such an exception to exist it could have clearly stated it.

Response A: It has been some time since I studied logic, but this is a classic form of a fallacious argument. Mr. Anderson is trying to prove a point by what was *not* said rather than what was. You can not prove a proposition by a negative.

But what the code does say is that a judicial candidate may speak on his own behalf at "gatherings". The word "gatherings" is more general than "political gatherings" and should be interpreted to include a wide variety of gatherings such as union meetings and candidate forums as well as political gatherings. The Code should then be interpreted to say that a judicial candidate may not attend political gatherings except that he may attend any type of gathering, including political, to speak on his own behalf. This is the interpretation which was adopted by the Office of Lawyers Professional Responsibility. (Again, please see this decision which is attached.)

Response B: It is a rule of interpretation or construction that you should not interpret a rule in such a way as to render part of its language meaningless. Mr. Anderson wants to interpret Canon 5A(1) to state a judicial candidate can never attend political gatherings. Yet Canon 5A(1) clearly states "Except as authorized in 5B(1)". This language must have some meaning. There must be some exception in 5B(1) to the general rule of 5A(1). That exception is that a candidate may speak at gatherings on his own behalf.

Response C: Mr. Anderson's argument ignores history. the Code prior to January 1, 1996 stated a judicial candidate could not "attend political gatherings", Canon 7A(1)(c). It also said that a candidate "may

accept invitations to attend and speak on his or her own behalf at other than partisan political gatherings", Canon 7A(2). This language was changed on January 1, 1996 to state that a candidate "may speak at gatherings on his or her own behalf", Canon 5B(1)(a). If you wish to apply Mr. Anderson's reasoning process, then apply it to the facts. The Supreme Court knew exactly how to say that judicial candidates could speak except at partisan political gatherings because that is what the code said prior to January 1, 1996. The court changed that language and changed it for a purpose by eliminating "at other than partisan political gatherings". The clear purpose of the change is to allow candidates to speak on their behalf at all type of gatherings including political gatherings.

3. Argument: Because it is not clear if the restrictions placed on the free speech of judicial candidates are constitutional, the Republican Party may become involved in litigation if it endorses a judicial candidate.

   Response: The argument confuses the free speech rights of the Republican Party to endorse candidates (which is clear), with the free speech rights of a judicial candidate to speak on various issues (which is not clear). As a practical matter, the Code allows judicial candidates to discuss their judicial philosophy, such as whether they believe in the strict interpretation of the Constitution, and to criticize prior court decisions. I believe that I am able to effectively get out a message without violating even the most restrictive interpretation of the Code. Again, I would refer you to the Decision of the Office of Lawyers Professional Responsibility which discusses whether I violated the Code by announcing views of disputed legal or political issues and concludes that I did not.

If any member of the Committee would like me to answer any further questions I would be most willing to do so.

Yours truly,

WERSAL LAW OFFICE, P.A.

/s/ Gregory F. Wersal
Gregory F. Wersal

GFW/gg
Enclosure

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Affidavit of Gregory F. Wersal Filed March 26, 1998

STATE OF MINNESOTA) Affidavit of
ss.
COUNTY OF HENNEPIN) Gregory Wersal

Gregory Wersal having been duly sworn under oath states as follows:

1) I am an attorney licensed to practice law in the State of Minnesota and was a candidate for Associate Justice to the Minnesota Supreme Court in 1996 and am currently a candidate for Associate Justice to the Minnesota Supreme Court for in 1998.

2) During the course of my campaigns, and previous to the most recent changes in the Code of Judicial Conduct by the Minnesota Supreme Court, I spoke at numerous political party gatherings.

3) On April 26, 1996, I attended the Third Congressional District Republican Party Convention. After my speech Mr. Michael Bolen approached me. Mr. Bolen was visibly upset, angry, and began yelling at me that I had violated ethical rules for judicial candidates and that he intended to file an ethical complaint against me. I was shocked at Mr. Bolen's aggressive behavior, as were some other convention attendees who intervened and defused the situation.

4) In May, 1996, an ethical complaint was filed against me with the Office of Lawyers Professional Responsibility arguing that I had violated the rules of ethical conduct for judicial candidates by my attendance

at the Third Congressional District Republican Convention. On June 13, 1996, the Office of Lawyers Professional Responsibility determined that sanctions against me were not warranted.

5) In July 1996, I spoke at the State Convention of the Republican Party of Minnesota. At that convention, Michael Bolen stood and announced to the 2,000-3,000 delegates that were attending that I was violating ethical rules for conduct of judicial candidates and that he would file a complaint against me with the Office of Lawyers Professional Responsibility. Many of the delegates were upset by these allegations and numerous people asked me to explain my position. Many delegates told me that they did not want the Republican Party involved in a legal dispute and did not want to be part of any candidate's ethical violations.

6) Shortly after this convention, I withdrew as candidate for Associate Justice as a result of the Complaint which had been filed against me at the Office of Lawyers Professional Responsibility and the risk that further complaints would be filed against me and thereby jeopardize my ability to practice law.

7) In January of 1997 I announced my intention to be a candidate for Associate Justice in the primary and general elections of 1998.

8) On April 25, 1997, Michael Bolen interrupted the Third Congressional District Republican Convention when I was called to the podium to speak. Mr. Bolen denounced my actions as unethical and again stated his intention to file an ethical complaint against me. The Chair of the Convention ruled that Mr. Bolen was out of order and asked Mr. Bolen several times to cease his protest before I could finally speak. Again I began to have fears about whether I could

conduct a campaign with the constant threat of possible ethical complaints.

9) Upon information and belief, between May and September of 1997, Mr. Bolen attended meetings of the Republican Party Constitution Committee where he argued that the Republican Party should change its Party Constitution to prevent the Party from endorsing judicial candidates.

10) Upon information and belief, in February of 1998, Michael Bolen contacted the Republican Party and asked them not to join me in the current law suit before this court.

11) Upon information and belief, unknown third persons have distributed photocopies of my campaign literature at some of the Republican Conventions which occurred between March 14-21, 1998. And upon information and belief, individuals have spoken at some of these conventions supporting my candidacy, though I have asked them not to speak on my behalf for fear of ethical complaints. That over the next three weekends 71 additional Republican Party County and Senate District Conventions will be held. I already know that there are individuals who intend to attend these conventions, as well as other Republican Party gatherings, and speak on behalf of my candidacy despite the fact that I have asked them repeatedly not to.

12) That I fear Mr. Michael Bolen and others who wish to derail my campaign by filing ethical complaints will do so when they see individuals attending the numerous conventions who speak on my behalf and who distribute photocopies of my literature announcing my views on disputed political or legal issues.

13) Upon information and belief, in mid-March 1998, Michael Bolen contacted the Fifth District Republican Office to investigate my background with the Republican Party, including whether I had been a precinct chair, or attended caucus meetings as far back as 1996. I believe that this investigation by Mr. Bolen is a prelude to his filing ethical complaints against me, as he has said he would do on numerous occasions.

14) I feel that these ethical complaints will consume an inordinate amount of time which I must take away from my law practice and will put my very livelihood in jeopardy.

3-26-98
Date

/s/ Gregory F. Wersal
Gregory F. Wersal

Subscribed and sworn to before me
this 26th day of March, 1998.

/s/ Mark E. Wersal

[SEAL] MARK E. WERSAL
NOTARY PUBLIC MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2000

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 27

MINNESOTA BOARD ON JUDICIAL STANDARDS
[Address and Names Omitted In Printing]

July, 1998

RE: 1998 Judicial Election

Dear Judicial Candidate:

The board on Judicial Standards has requested that I forward to you a brief summary of questions that have been asked of the Board from time to time concerning election conduct. We are enclosing a brief summary of judicial election practices and a brief synopsis of the formal opinions rendered in past years by the Board.

The Code of Judicial Conduct can be found in *1998 Minnesota Rules of Court* starting on page 837. Canon 5 (page 847) is the section of the code which deals with the campaign conduct of a judicial candidate. It was clarified by the Supreme Court effective January 1, 1998. We call your attention to two other provisions of Minnesota Law; Fair Campaign Practices Act, MS 211B and Ethical Practices, MS 10A.

The American Judicature Society has published a book entitled, *"Electing Justice: The Law and Ethics of Judicial*

Election Campaigns." by Patrick M. McFadden. We have enclosed a copy.

Minnesota CLE, Minnesota Board on Judicial Standards and Minnesota Supreme Court's Office of Continuing Legal Education for State Court Personnel are planing a workshop, "How To Run A Judicial Campaign" for Saturday, August 1, 1998. Enclosed is the flyer with the detailed information.

If you have any questions, please feel free to contact this office.

Sincerely,

/s/ DePaul Willette
DePaul Willette
Executive Secretary

Enc.

MINNESOTA BOARD ON JUDICIAL STANDARDS

Judicial Election Practices

The Code of Judicial Conduct adopted by the Supreme Court in 1976 and Canon 5 of the code, which was further clarified by the Supreme Court on January 1, 1998, governs the election of any candidate for judicial office. The Code of Judicial Conduct is published in *Minnesota Rules of Court, 1998*, page 837.

During the election years, the Board has received questions from incumbent judges and attorneys who have

filed for judgeships (candidates) regarding campaign conduct. The following are some of the responses to inquiries the Board has received.

1. The Code of Judicial Conduct applies to all candidates for judicial positions including the challenger and the incumbent judge.

2. The Board on Judicial Standards has jurisdiction to discipline incumbent judges for election conduct violations. The Lawyers Professional Responsibility Board has the responsibility to impose discipline on attorneys as candidates for judicial position who violate the code on Judicial Conduct (Rule 8.2, Rules of Professional Conduct). If the non-incumbent candidate is successful in the election, then the responsibility for disciplining election conduct violations is the responsibility of the board on Judicial Standards.

3. Responsibilities of candidates to comply with the code on Judicial Conduct in election matters commences when the candidate announces that he or she is seeking a judicial position.

4. The candidates election speech is limited by Canon 5A(3)(d). It reads as follows:

"(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues: or misrepresent his or her identity, qualifications, present position, or other fact, or those of the opponent; and

(ii) by words or conduct manifest bias or prejudice inappropriate to judicial office."

5. The candidate can not solicit campaign funds directly but must do this through the establishment of a committee. The candidate can not use campaign contributions for his or her or family members benefit.

6. A candidate should maintain the dignity appropriate to the judicial office and encourage members of their family to the same standards.

7. A candidate should not use courthouse personnel or employees under their direction or control for campaign purposes.

8. A candidate should not have their election materials in the courthouse for public distribution.

9. A candidate should refrain from comment on a judge's handling of any case that is presently pending on appeal or within the time of appeal.

10. Candidates are not to participate in political activities nor seek or use political endorsements under Canon 5A(1)(a) and Canon 5A(1)(d).

There is also attached to this Memorandum a summary of formal private opinions issued by the Board on Judicial Standards in the past.

Any questions regarding the election practices in judicial contests may be referred to:

Board on Judicial Standards
2025 Centre Pointe Boulevard
Suite 420
Mendota Heights, MN 55120
Telephone (612) #296-3999

Depaul Willette March, 1998
Executive Secretary
Board on Judicial Standards

BOARD ON JUDICIAL STANDARDS

Election Opinions

8/23/70 It is permissible for a judge running for reelection to be pictured on campaign material in the judge's robe.

7/24/80 A candidate running for judicial office may campaign door to door, display posters in businesses and public places and send out letters to voters with the candidate's history and qualifications.

Candidate is personally responsible for the truth and propriety of all campaign materials and activities.

9/22/80 A candidate running against an incumbent judge can not compel the judge to respond to a candidate's "statement of facts."

8/14/84 A judge, in the same district as a judicial candidate running for reelection, may comment when an inquiry is made by a news media on the judicial candidate's qualifications and court activities.

It is a violation of the canon for the judge to make an election contribution to the judge or the judge's registered campaign committee.

9/3/86 It is inappropriate for a judicial officer (referee) to be pictured wearing a judge's robe and using the title "Judge."

8/18/88 Judges' election filing fee may not be paid by the judge's campaign fund

10/10/90 In all election contests, a candidate for judicial office may discuss decisions and opinions of the Appellate courts.

[LOGO] Minnesota State Bar Association | Continuing Legal Education

[Address and Phone Number Omitted in Printing]

June 1, 1998

Minnesota CLE, the Minnesota Board on Judicial Standards, and the Minnesota Supreme Court Office of Continuing Education for State Court Personnel invite you to participate in the

Judicial Campaign Law and Ethics

Saturday, August 1, 1998
Suite 230, Judicial Center
25 Constitution Avenue • Saint Paul

Dear Judges, Judicial Candidates, and Campaign Staff:

This is your opportunity to reserve your place in the **Judicial Campaign Law and Ethics Workshop**. The workshop offers what you *need to know* to comply with the

rules, codes and laws governing judicial campaign practices. The workshop further offers practical tips on how to organize and run your campaign from beginning to end, with a special emphasis on fulfilling ethical requirements.

Our distinguished faculty include Cynthia Gray – National Expert on Judicial Campaign Law and Director of the American Judicature Society in Chicago, Illinois; Honorable Bruce D. Willis; Robert M.A. Johnson; Joseph Mansky; Gary Goldsmith; and DePaul D. Willette.

In addition to giving presentations, they want to answer your specific questions about anticipated problems and problems that have arisen during past campaigns. Bring any past campaign literature and advertising pieces for display and analysis.

Agenda

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* * * a.m. Registration and continental Breakfast

* * * a.m. **AN OVERVIEW OF ELECTION LAW AND ETHICS.** An overview of the rules, codes and laws that shape campaign activity. This includes an analysis of Canon 5 of the Code of Judicial Conduct, which governs campaign practices.
– DePaul D. Willette

* * * -10:30 a.m. **HOW TO ORGANIZE A CAMPAIGN.** A discussion of the legal requirements for setting up a campaign committee, filing for office, and registration and reporting; also, a look at the role of the

Campaign Finance and Public Disclosure Board, obtaining advisory opinions and what to do with them, and an overview of recent advisory opinions.
– Honorable Bruce D. Willis and Gary Goldsmith

10:30-10:45 a.m. Questions and Answers/Panel Discussion

10:45-11:00 a.m. Break

11:00-11:30 a.m. **ELECTION DAY AND POST-ELECTION CONCERNS.** A look at the election process, the role of the Secretary of State's Office, how recounts work and reporting requirements.
– Joseph Mansky

11:30-11:45 a.m. Questions and Answers/Panel Discussion

11:45-1:00 p.m. Lunch (included with your registration)

1:00-2:30 p.m. **CAMPAIGN ACTIVITIES.** A summary of the legal and ethical requirements and limitations for campaign advertising, literature, and endorsements; including discussion of the Fair Campaign Practices Act and campaign candidate speech.
– Cynthia Gray and Robert M.A. Johnson

2:30-2:45 p.m. Questions and Answers/Panel Discussion

2:45-3:45 p.m. **FUND RAISING.** An overview of legal and ethical requirements and limitations in fundraising.
– Cynthia Gray, Honorable Bruce D. Willis, and DePaul D. Willette

3:45-4:00 p.m. Questions and Answers/Panel Discussion

Faculty & Planners

Cynthia Gray
Director
American Judicature Society
Center for Judicial Conduct Organizations
Chicago, Illinois

Gary Goldsmith
Assistant Executive Director Campaign Finance & Public Disclosure Board
Saint Paul

Michael Johnson
Staff Attorney
Research and Planning
State Court Administration
Saint Paul

Robert M.A. Johnson
Anoka County Attorney
Anoka

Joseph Mansky
Director
Election Division, Office of the Secretary of State
Saint Paul

Alanna K. Moravetz
Director
Supreme Court Office of Continuing Education
Saint Paul

DePaul D. Willette
Executive Secretary
Minnesota Board on Judicial Standards
Mendota Heights

Honorable Bruce D. Willis
Judge, Minnesota Court of Appeals
Saint Paul

Credits: Minnesota CLE has applied for 5.0 hours CLE credit and 5.0 hours continuing judicial education credit. Additionally, we have applied for 1.5 of those hours to count towards continuing *ethics* education credit.

Information: If you have any questions or need further information, please call Minnesota CLE at (612) 227-8266 or (800) 759-8840

Accommodation: If you have a disability and need an accommodation in order to attend this seminar, please contact us as soon as possible or at least one week in advance of the program. For further information or assistance please contact Minnesota CLE, 40 Milton Street North, Suite 174, Saint Paul, MN 55104-7094 or call (612) 227-8266 or (800) 759-8840.

No-Show Policy: Paid registrants who fail to attend will receive the written materials. Passholders may purchase the course materials at 50% of the full retail price.

Cancellation Policy: Paid registrants who cancel their registration at least 72 hours before the program will receive a full credit on their account; if fewer than 72 hours, a $25 administrative fee will be deducted.

REGISTRATION/ORDER FORM 98-02.01JC

Judicial Campaign Law and Ethics

Saturday August 1, 1998
Suite 230, Judicial Center • 25 Constitution Avenue • Saint Paul

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Cost is $50 per person.

Enclosed is $___ by: [ ] Check [ ] Visa
[ ] Discover [ ] MasterCard
[ ] Am. Express

Card No. _____ Exp. _____

Signature _____

Program Materials: I am unable to attend. Please send me ___ copy(ies) of program written materials at $50.00 each. Materials will be available after August 1, 1998.

[ ] I have a Minnesota CLE Season Pass℠. Pass #___
[ ] *Check here if address below is new.*

Name (first) (mi) (last) _____
Firm _____
Address _____
City/State/Zip _____
Phone _____ Fax _____
Attorney License No. (if applicable) _____
Profession, if non-attorney _____

MAIL TO: Minnesota CLE, 40 Milton St. N, #174, St. Paul, MN 55104-7094

QUESTIONS? Call (612) 227-8266 or (800) 759-8840.

AMERICAN JUDICATURE SOCIETY

ajs

Studies of the Justice System

Electing Justice:
The Law and Ethics of
Judicial Election
Campaigns

Patrick M. McFadden

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 29

Minnesota Board on Judicial Standards

Memorandum

TO: 1998 JUDICIAL CANDIDATES

FROM: DePaul Willette, Executive Secretary

DATE: August 20, 1998

RE: Judicial Election Materials

It has come to my attention that the summary of Board opinion 8/14/84, sent to you as part of our election material, is confusing. I agree. I am forwarding the re-edited version for your records. Please discard the former handout.

Thank you. DePaul

BOARD ON JUDICIAL STANDARDS

Election Options

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8/18/88 Judges' election filing fee may not be paid by the judge's campaign fund.

10/10/90 In all election contests, a candidate for judicial office may discuss decisions and opinions of the Appellate Courts.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 37

Wersal Law Office, P.A.
[Address Omitted In Printing]

February 10, 1998

Dear Editor:

I am writing to you to bring to your attention the recent Order of the Minnesota Supreme Court which will drastically change the way judicial election campaigns are conducted throughout the state of Minnesota. This action by the Supreme Court also raises serious questions of an abuse of power by our Supreme Court when it muzzles its opponents from speaking in free and open elections and when it assumes a function that belongs to the Legislature in determining how judicial campaigns are to be conducted. Finally, it raises questions about what is left of democracy in judicial elections.

The Order of the Supreme Court, a copy of which is attached, does the following:

1) It prohibits judicial candidates from speaking in their own behalf at political party gatherings (an accepted practice prior to this change of Canon 5 of the Code of Judicial Conduct).

2) It prohibits the judicial candidate's campaign committee from seeking, accepting, or using the endorsement of a political party (prior to this change in Canon 5, the

campaign committee of a judicial candidate could seek the endorsement of *any group*, including a political party).

3) It prohibits judicial candidates from announcing their views on disputed legal and political issues (several Federal District Courts have found similar language an unconstitutional infringement of free speech).

It is true that as a candidate for the Minnesota Supreme Court, I have my own axe to grind. So I will begin to grind that axe by giving you some history. I began a campaign for the Minnesota Supreme Court in January 1996, frequently speaking to political party groups. Ethical complaints were filed against me arguing that a judicial candidate should not talk to political parties. I won all of these complaints (see attached Determination that Discipline is Not Warranted). When my campaign committee was unable to get the endorsement of the Republican Party, I decided not to file for office for the elections in 1996. Please understand that the Republican Party had never endorsed a judicial candidate before.

Throughout 1997, I again campaigned and spoke at political party conventions and meetings as a candidate for the elections to be held in 1998. My campaign has had some success. In the Fall of 1997 the Republican Party instructed their Search Committee to include in their search for candidates to endorse, judicial candidates for statewide offices.

Shortly thereafter, the Minnesota Supreme Court held a hearing to change the Code of Judicial Conduct and in fact did so. Prior to the adopting of the changes, a hearing was held before the Supreme Court at which I asked all of the Justices who were to stand for election in 1998

to recuse themselves. None of them did. Justice Page, Justice Gardebring, and Justice Tomljanovich all participated in a decision, the only effect of which was to stop their potential opponent's ongoing campaign. Judges are to avoid even the appearance of impropriety. In fact, one provision of the Code of Judicial Conduct states that a judge should disqualify himself where "the judge knows that he or she has an interest that *could be* substantially affected by the outcome of the proceeding."

You may not agree that a judicial candidate should speak at political gatherings. You may find this idea unseemly. But is it fair to change the rules in the midst of an election cycle? Or is it fair for a sitting judge to decide how his opponent may campaign? And finally, one may question the property of sitting judges determining how judicial campaigns may be run when the Minnesota Constitution says that judicial elections are to be conducted in a manner determined by the Legislature.

If we want judicial candidates to be pure and unaffected by outside influences, why allow them to be endorsed by groups or individuals other than political parties? If a candidate is endorsed by the NRA or Planned Parenthood or any other single issue group, isn't that even more of a problem? The original rule change requested by the Board on Judicial Standards would have applied to such groups, but the rule as finally adopted by the Supreme Court was limited to political party groups. Do you think this is a mere coincidence?

The real question is what remains of judicial elections when opponents to judicial incumbents are prevented

from speaking? And what remains of democracy when it is the incumbent judges who have created these rules?

I hope you will look at this issue and discuss it in your newspaper. If you have any questions please feel free to call met at (612) 546-3515 or cell phone (612) 701-9623.

Yours truly,

Gregory F. Wersal
Candidate for MN Supreme Court Justice

GFW/bmh
Enclosures

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 61

FRIDAY, JUNE 12, 1998

Star Tribune Editorial

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opinion@startribune.com

Political Candidate Wersal misleads voters in describing elections

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Counterpoint

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* * *

[Copy Illegible From Courts Below]

genuine public policy debate in these pages. I know from personal experience that Wersal's latest statement that the rules silence him is simply wrong.

In 1996 I was a candidate for a Hennepin County judgeship. I lost, but not for want of frank and open discussion. I had many interesting conversations with voters about how judging in Hennepin County has become less a matter of weighing lofty legal principles and more a matter of managing large groups of people exhibiting difficult social problems: drug abuse, domestic violence, juvenile delinquency, drunken driving, unpaid child support. I answered questions from reporters and

editorial writers about the effectiveness of criminal sentencing and how to reduce the high cost of divorce. At candidate forums I responded to questions about what to do about juvenile court proceedings and the importance of diversity on the bench. The campaign rules never provided the slightest restriction on saying anything of importance.

What Canon 5 of the Minnesota Code of Judicial Conduct does prohibit is a judicial candidate "announcing his or her views on disputed legal or political issues." This restriction immediately follows a prohibition against making "promises of conduct in office other than the faithful and impartial performance of the duties of the office." Both rules have the same purpose – to keep judicial elections from becoming referendums on hot social issues. Whether or not these restrictions are ultimately found unconstitutional, it would do voters a disservice to focus a campaign on controversial social issues like abortion and sexual preference.

To begin with, controversial social issues are only a tiny fraction of the judiciary's workload. More important, when any such issue does reach the court, a judge is expected to put his or her personal opinions aside. Good judges take their guidance from a study of the law, and they then apply the law fairly and impartially to the individual case before them. Each case has its own particular set of facts and its own unique procedural history which may cause an open minded judge to decide similar cases differently based on the same body of law. A judicial candidate who thinks that his opinion in the abstract about a disputed issue is terribly important is practically announcing his lack of judicial temperament.

There is a place for candidates who want to promote their personal views on disputed issues. That place is the Minnesota Legislature, not the Supreme Court.

So let's not let Wersal get away with pretending he can't talk. Let's ask him his ideas about the judiciary's role in managing social problems. Let's ask him how we can keep exorbitant legal fees from barring even average citizens, not to mention the poor, from equal access to the means of justice. Let's ask him whether he thinks large damage awards promote economic efficiency.

And most important, let's ask Wersal – and all this season's judicial candidates – the crucial personal questions: How have they demonstrated the open-mindedness, good judgment and appreciation of people from all walks of life that qualify them to be a judge? How have they exhibited the qualities of leadership expected of a Minnesota Supreme Court justice?

Minnesota has been blessed with many outstanding Supreme Court justices. It's a position reserved for people who answer hard questions, not avoid them.

– Bruce A. Peterson, Minneapolis Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 73

Announcement Against Alan Page
July 7, 1998

Good Afternoon. I am pleased to announce that at 8:00 o'clock today I filed for the office of Justice to the Minnesota Supreme Court against Alan Page.

I am running for this office for one reason – we must restore democracy to our courts. To have democracy you must have free political speech and free and open elections; right now we have neither.

At the beginning of this year, we all thought there would be 3 elections for judges on the Supreme Court. We are now down to one seat that's left. First Ester Tomljanovich resigned. And then Sandra Gardebring resigned only 6 business days before opponents could file for the office with the Secretary of State. By their deliberate actions, each of these judges stole an election from the people of Minnesota; because by their resignations, the Governor has appointed people to positions that should have been open to election.

But stealing elections is nothing new to our courts. The judges on our Supreme Court have created a web of rules called Canon 5 which steal elections everyday. These rules prohibit judicial candidates from discussing legal issues or even criticizing a judge's decisions. Imagine a lawyer who can't talk about the law and you will

begin to understand the problem with Canon 5. And these rules really do exist. And so year after year, election after election, you and I are told to exercise our constitutional rights and vote for a judge when we have been denied the most basic information we need to make a decision. These elections have all been stolen.

So why run against Alan Page – after all, he was actually elected to office, not appointed, and isn't it elections that I'm fighting for? The reason is that Alan Page was there in the Ivory Tower when so many decisions were made that keep us from having real elections; and he did nothing. And because he was elected, don't we as voters have a right to expect more from him than from the judges who were appointed? In 1994, a blue ribbon committee appointed by the Supreme Court told the Supreme Court that the rules restricting judicial campaigns must be changed. Where was Alan Page? Was he there fighting to change Canon 5 and to open up judicial elections? No, he was in the Ivory Tower, and he did nothing. And in 1995 when the Board on Judicial Standards recommended changes that would allow candidates to criticize a judge's decisions, where was Alan Page? He was in the Ivory Tower with all the judges who had been appointed, apparently comfortable in his belief that he'd never have to worry about anyone criticizing his decisions.

But worst of all, in 1996, the citizens of Minnesota passed a Constitutional Amendment calling for the establishment of recall elections for all public offices, including judges. There is only one problem with the law; the law directs the Supreme Court to establish what would be sufficient grounds for a judge to be recalled. And now,

almost 2 years later the Supreme Court has yet to establish even one ground for the recall of a judge. What is the matter, can't that crowd at the Supreme Court think of any reason that a judge should be recalled? Any reason at all? How about the commission of a felony? How long are we going to have to wait? Until the Supreme Court acts, the citizens of Minnesota are denied there [sic] constitutional right to elections to recall judges from office. And during this 2 years, where was Alan Page? He was in the Ivory Tower.

You see these judges in the Ivory Tower don't want real general elections. They don't want recall elections. And for heavens sake, they don't want accountability.

Ladies and gentlemen, if you accountability, then we must eliminate the rules that prevent a candidate from even criticizing a judge's decision. If you want real elections, then candidates must be able to talk about more than why they cannot talk. So this November I will ask you and all the people of Minnesota to vote for Greg Wersal, though the Minnesota Supreme Court, with all its rules and prohibitions, won't let me give you one good reason to do so.

/s/ Greg Wersal
Greg Wersal

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 77

Wersal Law Office, P.A.

[Address Omitted In Printing]

Letters to the Editor

Dear Editor:

Below is a commentary I hope you will consider using in your paper. Because the subject includes some serious allegations, I have attached copies of the supporting documents. If you have any questions, please call me.

/s/ Greg Wersal
Greg Wersal

When Justice Is Not Blind

Supreme Court Justice Alan Page needs to explain his conduct to the voters. An ethical complaint filed August 19, 1998 with the Minnesota Board on Judicial Standards states that Page sat and decided cases involving contributors to Page's charitable foundation. This doesn't look good – in fact, it smells.

Page established the Page Education Foundation in 1988 to provide scholarships to minority students who wished to go to college. The foundation's purposes are laudable. Contributors to the foundation include many major Minnesota corporations, or their foundations, and large Minnesota law firms.

But there is a problem when these same corporations and law firms later have cases in front of the Minnesota Supreme Court and Alan Page sits on these cases as a judge. Every one wants to know that when they appear in front of a judge that the playing field is level – but it is hard to have confidence in the impartiality of the judge if your opponent has given thousands of dollars to the judge's favorite charity. And that's exactly what happened here.

Page may want to argue that he didn't know who the contributors were. But that just won't wash. The contributors and the amounts given are detailed in tax documents signed by Alan Page and filed with the Charities Division of the Attorney General. And right above Page's signature is the phrase, "Under the penalty of perjury, I declare that I have examined this return . . . and to the best of my knowledge it is true, correct, and complete." Nor can Page say that he separated himself from knowledge of who the contributors were after he took office as a Supreme Court justice in January of 1993. Page signed tax forms under the penalty of perjury on 11-14-94 and again on 11-15-95 that listed corporate contributors such as The Saint Paul Companies ($20,000), Colwes Media Foundation ($45,00), Honeywell Foundation ($10,000), and the law firm of Robins, Kaplan, Miller & Ciresi ($5,000). And later Page participated and decided cases cases [sic] before the Supreme Court involving The Saint Paul Companies, Colwes Media and Honeywell and in which the Robins law firm represented a party.

It gets even worse. Contributions to the foundation have soared since Page became a Supreme Court justice. Hundreds of thousands of dollars now flow into the

foundation from contributors each year. In 1997 contributions totaled $888,000 – whereas the contributions averaged only $126,000/year for the four years before Page was on the Supreme Court.

It's impossible to avoid asking whether Alan Page was actually influenced? Who knows? But that's really not the point. We should never have to ask these questions of a judge in the first place. We should never have to ask if justice is truly blind.

/s/ Greg Wersal
Greg Wersal

Greg Wersal is a candidate for the Minnesota Supreme Court against Alan Page.

Why can't the Supreme Court get it right

Those who have criticized my campaign for the Minnesota Supreme Court, such as Bruch Peterson, either fail to understand, or perhaps don't care, about democracy. In a democracy, the voters need to be able to make informed decisions to choose their leaders. But in a recent survey, 86% of voters said they needed more information about judicial candidates to make a decision. The rules created by the Minnesota Supreme Court (Canon 5) gag judicial candidates and deprive voters of the information they need. Anyone who says otherwise needs to wake up and smell the coffee.

Some try to argue that my ideas are radical and will undermine the system of judicial selection. How radical can I be when so many other legal establishment groups

agree with me? Years ago, the American Bar Association recommended that the rule, prohibiting judicial candidates from "announcing their views on disputed legal and political issues", be eliminated from judicial codes because it was an unconstitutional infringement of free speech. The Minnesota Supreme Court established a blue ribbon commission to study the issue and they recommended the same change for the same reason in 1994. The Board on Judicial Standards supported the recommendation. The Lawyers Board of Professional Responsibility doubts the constitutionality of the "announce" clause and has refused to enforce it. The Minnesota State Bar Association is currently asking its members for permission to petition the Supreme Court to eliminate the clause. So you see my ideas are far from radical; in fact, they are mainstream.

The only difference between me and these groups is that when the Minnesota Supreme Court ignored their recommendations they did nothing about it. I've decided to fight for the right of the people of Minnesota to have free and open elections and choose their judges.

Not all legal groups agree. In my research I found two groups that argued against the change proposed by that blue ribbon commission. The first was the Minnesota Conference of Chief Judges. The second was the Minnesota District Judges Association. Surprise! Surprise!

The "announce" clause is so restrictive, it's virtually impossible for a candidate to criticize the legal policy established by his opponent. Of

* * *

One Refuses To Speak; Others Are Forbidden To Speak

In April of this year, the Minnesota Supreme Court set a new policy in a criminal law. The Court decided that the Fourth Amendment to the Constitution, which protects citizens from unreasonable searches and seizures, included a protection against a search of a suspect's mouth.

The police, investigating a burglary, approached and asked two men what they were doing. Knowing that it was common for drug dealers to conceal narcotics in their mouths, the officers noticed that one of the men would respond to their questions only by nodding his head. The officers knew that in this area there was a great deal of drug trafficking. When the officer saw that the man was trying to swallow something, he asked the man to open his mouth. Instead the man tried to flee, was subdued through the use of mace, and eventually spit out 2.6 grams of crack cocaine.

When the case was heard by the Minnesota Court of Appeals, they stated, "The Fourth Amendment protects only against governmental invasion of a privacy interest that society recognizes as reasonable. . . . A person has no legitimate expectation of privacy in the fact that his mouth is so crammed with some substance that he is not even able to talk."

On appeal, the Minnesota Supreme Court ruled that the policeman's request for the suspect to open his mouth constituted an illegal search and that the drugs must be excluded from evidence. As there was no other evidence,

the case was dismissed. This new policy creates a question of whether the police can do anything when suspects hide items in their mouths.

So here we have the Court of Appeals and the Minnesota Supreme Court, both applying their concept of society's expectations of privacy and coming to opposite conclusions. Which of them is correct? Some argue that the fourth Amendment is such a complicated, arcane and specialized issue that the average person can't tell which of them is correct? Others believe that members of society have a right to decide what authority the police should have to invade a citizen's privacy. And if citizens have legitimate opinions about the the [sic] power of government to control their lives, then these are the types of issues that should be discussed when we choose judges in elections.

The problem is that these issues are never discussed. They can't be discussed. The Minnesota Supreme Court in 1995 and again on January 1, 1998, adopted another set of policies in the form of ethical rules that judicial candidates must follow. Among these is a rule that judicial candidates cannot state their views on a disputed legal or political issue. This means that a judicial candidate cannot discuss his views on whether a search, such as in this case, was an invasion of a reasonable privacy interest. A lawyer who violates this rule could have his license to practice law taken away for unethical conduct.

I fail to see why the promotion of ignorance should be treated as a virtue. Prohibiting a judicial candidate from stating his opinion about issues doesn't mean that the candidate doesn't have opinions. It simply means that

the voters don't know what they are. What an insane way a conduct an election. You might as well have the competing candidates draw lots.

Worse yet, if issues can't be discussed, the whole purpose of elections is lost. You either believe that citizens have a right to control government encroachment in their lives, or you don't. You either believe in the ability of people to govern themselves, or you don't. You either believe in free and open elections, or you don't.

Oddly we now have a situation where a criminal is protected from governmental interference when he sticks an item in his mouth, but a judicial candidate doesn't have the same protection for the words that come out of his mouth.

Greg Wersal

Greg Wersal, a Golden Valley lawyer, is a candidate for the Minnesota Supreme Court.

Court Policies Need Citizen Review

Most people have the impression that our courts simply apply the law given to them by the Legislature. This impression is wrong; our courts create and set policies. And it is as policy makers that judges need to intermittently submit to elections to determine if they still deserve the public trust.

For example, the Minnesota Supreme Court has created and set a policy that custodial confessions made by suspects to the police must be tape recorded. If the police

fail to comply with this recording requirement, the confession will be suppressèd as evidence at trial. This means the police will not be allowed to testify, and the jury will not hear, "the suspect told me. . . . "

This policy was adopted in 1994. With this new policy, evidence that had been allowed into Minnesota courts for decades is now invalid. And the Court said it did not decide on this policy because it felt compelled to do so by the Constitution; nor because of some law passed by the Legislature. Rather the Court set this policy, in its own words, "in the exercise of [its] supervisory power to insure the fair administration of justice." The Court clearly was creating and setting policy.

Well, one person's sense of what is necessary to "insure the fair administration of justice" may differ from another's. In fact it appears that, at the time, the courts in 48 other states allowed into evidence the same types of confessions the Minnesota Supreme Court ordered must now be excluded.

This Fall, Justices Alan Page and Sandra Gardebring, who voted for this policy, will be standing for election. As a candidate for the Minnesota Supreme Court, I would like to tell the people of Minnesota what I think the policy should be. But, in 1995 and again on January 1, 1998, the Minnesota Supreme Court (including Page and Gardebring) adopted another set of policies in the form of ethical rules that judicial candidates must follow. Among these is a rule that judicial candidates cannot state their views on disputed legal or political issues. This means that I cannot discuss my views on the 1994 decision to exclude confessions from evidence, or much else for that

matter. I probably cannot even discuss the propriety of judges creating policy, as opposed to only interpreting policy created by the Legislature. Neither can any other judicial candidate. Does this policy serve the interests of the citizens of Minnesota? If neither opponents or incumbents can speak about important issues, how are people to make an informed decisions about who they want to have sit as judges?

Some have said that if judicial candidates discuss issues – I mean really discuss issues – that this will lead to partisanship. Well, what "partisan" groups are interested in the issue of whether a criminal's confession to a police officer will be told to a Minnesota jury? Are hard working, honest citizens who want to see criminals punished a "partisan" group? The idea that there is absolutely nothing a judicial candidate can say about a multitude of issues is profoundly troubling to the notions of free speech and open elections.

And thats the nub of the problem. If these rules had been created by the citizens of this State through their Legislature, the rules would have been an expression of public will. But the public has said it wants real elections about real issues; its only the policy of the Supreme Court which prevents them.

Greg Wersal

Greg Wersal, a Golden Valley lawyer, is a candidate for the Minnesota Supreme Court.

Wersal Law Office, P.A.
[Address Omitted In Printing]

Dear Editor:

Enclosed is a commentary/editorial piece for use in your newspaper. You can reach me at 612-546-3513 if you have any questions.

Yours truly,

/s/ Gregory F. Wersal
Gregory F. Wersal

Farewell To Justice Gardebring
And To All Incumbents

Justice Sandra Gardebring has announced her resignation from the Minnesota Supreme Court. Most people in this state probably did not know of her, or of her decisions on the Court. Most people were probably indifferent to the news. I, on the other hand, had a distinct reaction; I felt ill. Justice Gardebring has just stolen an election from the people of Minnesota.

Starting in January 1997 and throughout that year, I prepared a campaign to run for the Supreme Court, traveling from one corner of Minnesota to the other speaking about the need to change judicial elections. In May of year I had formally announced my candidacy against Gardebring at a rally at the State Capitol.

Now, Justice Gardebring, with the aid of other members of our Supreme Court, stole that election, not only from me, but from all Minnesotans. By her act of resignation – a resignation announced only 6 business days before candidates could file for the office with the Secretary of State – Justice Gardebring has created a situation

where the Governor will appoint someone to the Supreme Court and there will be no election for her seat this November.

I said this was done with the aid of other members of our Supreme Court, because the Supreme Court in a case before them in 1997, decided that no matter when a judge resigns prior to the expiration of his term, the Governor appoints a successor and the people of Minnesota are deprived of the right to choose their leaders in an election. Justice Alan Page stated that an incumbent judge could even stand for election in November, lose the election, and then prevent the winning candidate from taking office by resigning!

But the election system for choosing judges was corrupt long before Gardebring resigned. It was corrupted when the judges were noted as the incumbent on the ballot. It was corrupted when the judges created campaign rules that prevent their opponents from stating their views or criticizing the judges' decisions. It was corrupted when the judges created more rules that prevent their opponents from raising campaign funds, seeking endorsements or from even speaking at all to certain civic groups. (Yes, these rules really do exist.) It is so corrupt that at an election most voters have no idea who the judges are or why they should vote for them. And that apparently is the way the judges want it. And that is why virtually all of our judges in the State were originally appointed to their positions and continue to hold their positions, despite the fact that the Minnesota Constitution calls for judges to be elected by the people.

I realize now that the reason I felt ill was that, as a lawyer, I was ashamed. It is time to throw every incumbent judge out of office until they change this corrupt system.

/s/ Greg Wersal
Greg Wersal

Greg Wersal is a lawyer from Golden Valley.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 121

JUDICIAL ELECTIONS
ARE
THE KEY!!!!

WITHOUT REAL JUDICIAL ELECTIONS, THE CONSERVATIVE AGENDA WILL REMAIN STALLED:

WELFARE REFORM: Minnesota Courts have blocked recent attempts by our Legislature to control welfare spending.

CRIME AND PUNISHMENT: We are swamped with crime. Our Legislature's attempts to pass new laws will do nothing to stop it. We don't need new laws – we need judges who will put criminals in jail.

SOCIAL ENGINEERING: Judges have become the ultimate social engineers, attacking traditional concepts of morality and family. Judges impose their views on society on abortion, marriage, euthanasia, drugs, the ownership of guns, land use, environmental regulation, and the education of children.

THE PLAN OF ACTION

1. The Republican Party must fight to hear judicial candidates speak.
2. The Republican Party must fight to endorse the best candidates for judicial office.

Real Judicial Elections in 2000

We are on the way to real judicial elections in the year 2000. The Republican lawsuit progressing through the federal court system has been gaining momentum. The Minnesota Civil Liberties Union has joined with the Republican Party, arguing that judicial candidates should be able to speak at political party conventions and seek party endorsement. A final decision in district court will come as early as March or April.

OUR GOALS: The people of Minnesota should have a voice on who serves on their courts. The current election system prevents candidates from stating their views on legal issues and speaking at all to a political party. Our goal is to eliminate these rules which serve only to protect entrenched incumbents who are unaccountable to the public for their actions.

Our Goals Are:

1. **to elect judges who will strictly construe the Constitution**
2. **to elect judges who will interpret the law – not write the law**
3. **to elect judges who will respect and defer to the democratically elected Legislature on issues such as welfare, worker's comp., punishment for crime, partial birth abortion, etc.**

Prepared and paid for by Greg Wersal, 7842 Wayzata Blvd. Ste 201, St. Louis Park, MN 55426 (612) 546-3513 or (612) 701-9623.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 134

VOTE

WERSAL

Supreme Court

Gregory Wersal's
Campaign For Justice

JUDICIAL ELECTIONS
The only means to judicial accountability.

Judges are often criticized for their decisions; and so they should be. Their decisions affect the legal rights of others. They should interpret, not write, the law. Judges who make poor decisions *should be held accountable.*

Here are some recent decisions of the Minnesota Supreme Court. After reading these decisions, we hope you will be ready to –

VOTE FOR GREG WERSAL.

ABORTION

The Legislature had passed laws prohibiting the use of public funds to pay for abortions. In 1996, the Minnesota Supreme Court ruled that the State must use welfare funds to pay for abortions. This is directly contrary to the U.S. Supreme Court, which stated, "When an issue involves policy choices so sensitive as those implicated

by public funding of nontherapeutic abortions, the appropriate forum for the resolution in a democracy is the legislature." In other words, the court should defer to the legislature. The dissenting judge remarked the court "abandons all vestige of neutrality" in its pro-abortion stance. (Doe v. Gomez)

ADOPTION

In 1996, the Minnesota Supreme Court interpreted a statute affecting adoptions throughout the state. The statute stated that a natural father who failed to act within 90 days of a child's birth to state his intention to retain parental rights "shall lose parental rights". Because the Court found *that* language was not clear, the Court held that the father's parental rights were not terminated. The dissenting judge stated, "The statutory language is neither ambiguous nor confusing." (In the matter of the Paternity of J.A.V. and Conrad Hisgun)

CRIME

The Minnesota Supreme Court ruled that an in-custody confession must be tape recorded or it would not be allowed into evidence. This means that at trial the jury will not be told of the confession if the police did not tape record it. The dissenting judge, noting only one other state excludes such evidence stated, "I am unwilling to depart from the rule of the vast majority of courts in this country." (State v. Scales)

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE
(612) 546-3513

CRIME

In 1996, the Minnesota Supreme Court ruled that a criminal defendant has the *legal right* to a sentence outside of that provided for in law by the Minnesota Legislature. The Court's ruling will allow criminals to receive sentences more lenient than that provided for by the Legislature. Despite recent attempts by the Legislature to get tough on crime by passing laws for more severe sentences, the Court stated, "We see no reason not to allow a defendant . . . a departure [from State sentencing laws] as part of a plea bargain." (State v. Givens)

CRIME

The Legislature passed laws providing for more severe penalties for those who sold crack cocaine than for those who sold powdered cocaine. The Minnesota Supreme Court struck down these penalties due to the disproportionate impact on blacks. (This is directly contrary to the opinion of the U.S. Supreme Court which upheld similar Federal laws.) The dissent noted that the Legislature did not have a discriminatory purpose, but a valid purpose in providing a more severe penalty for crack, which is arguably more addictive than cocaine in the powder form. "[T]he majority has substituted its political judgment for that of the legislature. . . . [T]he power to define what act constitutes a crime and to fix the punishment for that crime rests with the legislature. This court has neither the obligation nor the right to interfere. . . . " (State v. Russell)

SEXUAL ABUSE

The Legislature passed a law to give more time to victims of sexual abuse to bring forward legal actions. In 1996 the Minnesota Supreme Court interpreted this law in such a way as to possibly eliminate hundreds of pending or anticipated sexual abuse cases before they even go to trial. Ember Reichgott Jung, author of the Statute of Limitations law, stated, "The Court appears to have overstepped its Constitutional authority in significantly rewriting the law . . . while the [Court] may not have agreed with the Legislature's approach, the Court does not have the authority to rewrite a statute that is clear on its face." (Blackowiak v. Kemp)

WELFARE

The Minnesota Supreme Court struck down a state law that limited the welfare benefits of people who recently moved to Minnesota to the amount they would have received in their state of origin. The purpose of the law was to prevent people from moving to Minnesota only to collect the higher welfare benefits paid in this state. The dissent argued the Court should defer to the Legislature, "[T]he Constitution does not empower this Court to second-guess state officials charged with the . . . responsibility of allocating limited public welfare funds. . . . " (Mitchell v. Steffen)

Who is Greg Wersal? An attorney since 1980, Greg has spoken for two years about the need for change in judicial elections. Recently Greg and the Republican Party of Minnesota have jointly sued in Federal Court asking that

new rules preventing Greg from speaking to Republican groups be struck down as violations of free speech.

Prepared and paid for by:
GREG WERSAL'S CAMPAIGN FOR JUSTICE
7841 Wayzata Blvd., Ste. 201, Minneapolis, MN 55426.
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VOTE
WERSAL
SUPREME COURT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 175

Hennepin County Bar Association

Professional Conduct Committee

April 17, 1997

Presentors:
DePaul Willette
Executive Secretary
MN Board on Judicial Standards

and

Catherine Haukadahl
Attorney at Law
Felhaber, Larson, Fenlon & Vogt

INDEX

- The board on Judicial Standards Rules & Procedures
- 1996 Contested Judicial Elections
- First Amendment Defense to Judicial Campaign Speech

Proposed Questions for
Judicial Candidates' Forum
September 5, 1996

1. What do you believe to be the most critical issue currently facing the Hennepin County Criminal Justice System and what do you recommend be done to address it?
2. The Minnesota Supreme Court recently adopted changes to the rules and Cannons that govern judicial behavior and discipline. One of the changes requires public disclosure of disciplinary actions when the judge's inappropriate actions or behavior is part of a pattern of such behavior. Give us your thoughts about this change to the Rules.
3. Minnesota is one of a handful of states that does not routinely allow cameras in the courtroom? Where do you stand on this issue and why?
4. How do you feel about judicial evaluation being undertaken by outside organizations? Should the results be disclosed publicly or should they be given privately and used only for the judge's person improvement.
5. The caseload in Hennepin County Juvenile Court has skyrocketed over the past few years. What do you believe to be the root cause for the high numbers of juvenile offenders? What can the court system do to reduce these numbers.
6. As a judge, who are your clients and what does it mean to provide good service to them.
7. Without giving his or her name, please describe the character of the judge you most admire.
8. Attorneys in civil litigation practice express great frustration at the length of time it takes to get their cases to trial in Hennepin County. They also express

frustration about the fact that, instead of getting a specific date for trial they are often given a period of six to eight weeks in which their case could be called, making it very difficult to prepare for trial. What can be done to address their concerns?

9. If you were given 50 million dollars and were told that it must be used to address the issues of crime and violence, what would you spend it on?

10. A variety of articles and reports on the problem of domestic abuse point to the very high percentage of cases (around 70%) that are dismissed at the pretrial stage, reportedly because the victim cannot be found or is unwilling to cooperate. What can be done to lower the number of domestic assault cases that are being dismissed?

11. What kinds of things would you do outside the courtroom to improve the justice system in Hennepin County?

12. Many feel that voluntary professional and community service is a necessary commitment for persons holding public office. What types of voluntary service have you been involved in?

13. What is, or will be, your personal mission in your role as judge and how will you go about accomplishing it?

14. Recent polls show that public trust in the justice system is at an all time low. Why do you think the public is so distrustful and what would you do to gain their trust?

15. If you observed a party in your courtroom being poorly represented by an unprepared or ineffective lawyer, what would you do?

16. The Racial Bias and Gender Bias Task Force Reports identify a multitude of ways in which women and

minorities are not treated fairly by our court system. What would you do to remedy the situation described in these reports?

17. Many victim's advocates have concerns about victim's rights in juvenile court. How would you balance the rights of crime victims and witnesses with the right to confidentiality possessed by juvenile respondents.

18. An article in the November 1995 issue of *Bench and Bar of Minnesota* entitled "Victims' Rights: Trial by Tribulation" makes the argument that crime victim rights have gone too far. It states among other things that victims are playing too great a role at the negotiation stage of a case and that victim impact statements shift the "atmospheric balance" toward punishment. Give us your thoughts about this issue?

19. Why should voters support you rather than your opponents?

20. A recent report showed that Minnesota has one of the lowest per capita rates of incarceration in the United States. Is that good or bad?

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 176

Minnesota State Bar Association

514 Nicollet Mall, Suite 300,
Minneapolis, MN 55402 – 612/333-1183

JUDICIAL ELECTIONS TASK FORCE REPORT & RECOMMENDATIONS

Adopted by the General Assembly June 19, 1997

[LOGO]

Recommendation No. 4

The MSBA should cooperate with the state Board of Judicial Standards, the Office of Lawyers Professional Responsibility, and community organizations to educate candidates and the public about the permissible range of candidate speech in judicial elections.

The Board of Judicial Standards routinely conducts educational sessions for judicial candidates on the requirements of Canon 5. In the last election, the Board also approved several lists of proposed questions for use at candidate forums. These lists were developed and submitted to the Board by W.A.T.C.H. – they are attached to this report as Appendix C.

Both lists contain useful examples of the kinds of questions regarding judicial philosophy and administration issues that are perfectly permissible under Canon 5. The Task Force recommends that the MSBA work with the Board and community groups to make information like this widely available to candidates, potential candidates and members of the public. The Task Force believes that if more voters understand both the reasons for restrictions on candidate speech and the extent to which their questions can be addressed by judicial candidates, they will become more interested and involved in the process.

Appendix C

Proposed Questions for Judicial Candidates' Forum September 5, 1996

1. What do you believe to be the most critical issue currently facing the Hennepin County Criminal Justice System and what do you recommend be done to address it?

2. The Minnesota Supreme Court recently adopted changes to the Rules and Canons that govern judicial behavior and discipline. One of the changes requires public disclosure of disciplinary actions when the judge's inappropriate actions or behavior is part of a pattern of such behavior. Give us your thoughts about this change to the Rules.

3. Minnesota is one of a handful of states that does not routinely allow cameras in the courtroom. Where do you stand on this issue and why?

4. How do you feel about judicial evaluation being undertaken by outside organizations? Should the results be disclosed publicly or should they be given privately and used only for the judge's personal improvement?

5. The caseload in Hennepin County Juvenile Court has skyrocketed over the past few years. What do you believe to be the root cause for the high numbers of juvenile offenders? What can the court system do to reduce these numbers?

6. As a judge, who are the people you serve and what does it mean to provide good service to them?

7. Without giving his or her name, please describe the character of the judge you most admire.

8. Attorneys in civil litigation practice express great frustration at the length of time it takes to get their cases to trial in Hennepin County. They also express frustration about the fact that, instead of getting a specific date for trial they are often given a period of six to eight weeks in which their case could be called, making it very difficult to prepare for trial. What can be done to address their concerns?

9. If you were given 50 million dollars and were told that it must be used to address the issues of crime and violence, what would you spend it on?

10. A variety of articles and reports on the problem of domestic abuse point to the very high percentage of cases (around 70%) that are dismissed at the pretrial stage, reportedly because the victim cannot be found or is unwilling to cooperate. What can be done to lower the number of domestic assault cases that are being dismissed?

11. What kinds of things would you do outside the courtroom to improve the justice system in Hennepin County?

12. Many feel that voluntary professional and community service is a necessary commitment for persons holding public office. What types of voluntary service have you been involved in?

13. What is, or will be, your personal mission in your role as judge and how will you go about accomplishing it?

14. Recent polls show that public trust in the justice system is at an all time low. Why do you think the public is so distrustful and what would you do to gain their trust?

15. If you observed an individual in your courtroom being poorly represented by an unprepared or ineffective lawyer, what would you do?

16. The Racial Bias and Gender Bias Task Force Reports identify a multitude of ways in which women and minorities are not treated fairly by our court system. What would you do to remedy the situation described in these reports?

17. Many victim's advocates have concerns about victim's rights in juvenile court. How would you balance the rights of crime victims and witnesses with the right to confidentiality possessed by juvenile respondents?

18. The recent outburst by Polly Klaus' murderer at his sentencing brought to national attention the potentially explosive dynamics that exist at such appearances. While defendants always have the right to speak at their sentencing, local victims' organizations have expressed concern about the fact that many judges are now allowing defendants' friends and family to speak on their behalf at sentencing. In some instances this has resulted in name calling, blaming the victim, and fights breaking out between the two families outside the courtroom. How do you, or would you, handle this situation in your courtroom?

19. It has been said that we learn best from our mistakes. Tell us about a mistake that you made that taught you something about law and justice. How did this or will this experience influence your work on the bench?

Questions for Judicial Candidate Forum
October 29, 1996

1. What do you believe to be the root causes for the high numbers of juvenile offenders? What changes can the court system make to reduce these numbers?

2. How could the costs of judicial administration be reduced? Can you give us a specific example of how you have reduced costs in your law practice/court?

3. In the area of hate crimes, what are some of the issues in balancing free speech rights against the need to control offensive activity?

4. What have been the most effective methods for improving court procedures and efficiency? What other methods would you suggest?

5. What do you perceive as the greatest obstacles to justice, if any?

6. What criteria would you use for deciding whether to impose or affirm sentences outside of standard ranges?

7. If you became aware of unethical conduct on the part of a trial advocate in a case in which you were presiding, how would you handle it? Do you believe judges should be required to report attorney misconduct?

8. To what extent have you practiced in the area of criminal law? Family Law? Complex civil litigation?

9. What do you believe are the causes of the high rates of minority incarceration?

10. Do you believe there is such a thing as a "victimless crime"? If so, what offenses would you place in this category?

11. Do you believe there is underrepresentation of women or people of color in the court system? If so, how would you work to correct the problem?

12. Do you believe that all citizens have adequate access to legal help and the legal system? If not, what can be done to provide wider and better access?

13. Please describe one instance in which you faced an ethical dilemma and how you resolved it.

14. Do you believe that voluntary professional and community service is a necessary commitment for persons holding public office? What forms of voluntary professional and community service have you been involved with in the past? Currently?

15. What injustices have you witnessed in or outside the courtroom and what was your response to those events?

16. What are the pros and cons of going to the bench as compared to practicing law?

17. Do you believe the current system for disciplining lawyers and judges is effective? Why or why not?

18. Who are your judicial role models? Why?

19. How do you deal with difficult people, including peers, lawyers, clients, or litigants?

20. Please describe a situation in which you took a controversial position that angered or offended people and explain how you handled it.

21. How would/do you deal with a *pro se* party appearing in your court?

22. Please describe your administrative experience. What are your primary strengths as a supervisor? As an administrator?

23. While serving on the bench, do you believe you have a role in bringing important legal or judicial issues before the public or the legislature? Why or why not? What should your role be?

24. What are the issues regarding alternative sentences for non-violent offenders?

25. What is your general judicial philosophy?

26. What is your vision for the future of our judicial system? What changes would you advocate and why?

27. Do judges have an obligation to improve public understanding of the courts? If so, how should they carry out that obligation?

28. Please describe your first-hand experiences, if any, dealing with people who are different from you socially, economically, or politically.

29. Do you think the court system is working or do you believe the civil or criminal justice system is breaking down?

30. What are your views on the need for more diversity on the bench and the manner in which the court treats members of different races?

31. Why should voters support you rather than your opponent?

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 186

Motion to Amend the Recommendation of the Executive Committee Regarding Canon 5

A motion will be made to amend the Recommendation of the Executive Committee to eliminate the following language:

> "Recommended, that in the event that either the 8th Circuit Court of Appeals or the U.S. District Court for the District of Minnesota invalidates the 'announce' provision of Canon 5 of the Minnesota Code of Judicial Conduct on constitutional grounds, or at such earlier time as the MSBA Executive Committee in its discretion deems appropriate."

And replace it with the phrase "Will all due deliberate speed".

The amended Recommendation would read as follows:

> With all due deliberate speed, the Minnesota State Bar Association shall petition the Minnesota Supreme Court to amend Section A(3)(d)(i) of Canon 5 of the Minnesota Code of Judicial Conduct in the following respect:
>
> A. (3) A candidate for a judicial office, including incumbent judge:

> (d) shall not:
>
> (i) . . . announce his or her views on disputed legal or political issues . . . *make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court . . .*

Reasons for the amendment are as follows:

1) The Constitution: The Executive Committee Report recognizes there are grave constitutional problems with the "announce" provision. As a group of lawyers committed to the Constitution, we should immediately petition the Court for change.

2) The Elections: We want fair elections. The Board on Judicial Standards continues to apply the "announce" provision to judges, but the Office of Lawyers Professional Responsibility has refused to enforce the provision against lawyer candidates. This creates an unfair situation. If the MSBA acts immediately to petition the Minnesota Supreme Court, the court could make the changes necessary before the election season has progressed too far.

3) Leadership: Recently the press has given much attention to the lawsuit regarding Canon 5. How will it look in the press if the MSBA sits on its hands? The MSBA should take a leadership role on this issue.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Declaration of Gregory F. Wersal Filed March 12, 1999

EXHIBIT 189

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE

VOTE
WERSAL
SUPREME COURT

PRESS RELEASE 6-26-98
ATTN: NEWS DEPARTMENT

Today in a major policy decision, the members of the Minnesota State Bar Association (MSBA), meeting at their state convention in Duluth, have authorized the MSBA to petition the Minnesota Supreme Court to change Canon 5 of the Code of Judicial Conduct. Canon 5 severely restricts judicial candidates campaign activity and has recently come under attack by a lawsuit filed by Greg Wersal, a candidate for the Minnesota Supreme Court.

Greg Wersal, a lawyer form [sic] Golden Valley, argued that the "announce" provision of Canon 5 is an unconstitutional infringement of free speech and urged the MSBA to take action. The "announce" provision of Canon 5 states "a candidate for judicial office . . . shall not . . . announce his or her view on disputed legal or political issues. . . . "

The MSBA also proposed that the "announce" provision be replaced with a statement that a judicial candidate "shall not . . . make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues likely to come before the court. . . . " This is the

same language suggested by Mr. Wersal in his lawsuit which is currently pending before the 8th Circuit U.S. Court of Appeals.

This is a major victory for Greg Wersal and further highlights his campaign to open up judicial elections so that the voters will know who the candidates are and have a reason to vote for them. Greg Wersal, age 43, began his campaign to change judicial elections in 1996 by speaking at political party conventions, a method not seen before in judicial elections. On January 1, 1998 the Minnesota Supreme Court changed Canon 5 to prohibit judicial candidates from speaking at political party conventions. In February 1998, Mr. Wersal joined by the Republican Party of Minnesota, began his lawsuit. At the Republican Party State Convention held last week in Minneapolis, the delegates adopted a platform plank stating that judicial candidates be allowed to "state their opinions on legal issues and past cases."

Campaign For Justice
7841 Wayzata Blvd.
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Minneapolis, MN 55426

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE
(612) 546-3513

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, an association; INDIAN ASIAN AMERICAN REPUBLICANS OF MINNESOTA, an association; REPUBLICAN SENIORS, an association, YOUNG REPUBLICAN LEAGUE OF MINNESOTA, a Minnesota nonprofit corporation, MINNESOTA COLLEGE REPUBLICANS, an association; GREGORY F. WERSAL, individually; CHERYL L. WERSAL, individually; MARK E. WERSAL, individually; CARWIN C. HULBERT, individually; CAMPAIGN FOR JUSTICE, an association; MINNESOTA AFRICAN AMERICAN REPUBLICAN COUNCIL, an association; MUSLIM REPUBLICANS, an association; MICHAEL MAXIM, individually; and KEVIN J. KOLOSKY, individually,

Plaintiffs,

vs.

Case No. 98-831(MJD)

PLAINTIFF GREGORY F. WERSAL'S DECLARATION

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

GREGORY F. WERSAL states as follows:

1. In December 1997, I had scheduled speaking engagements at various Republican Party groups through January and February 1998. While I had contacted numerous groups, I was only able to recall the following meetings based on my recollection and a review of my calendar:

   a. House District 53(B) Republicans meeting at 527 Shoreview Park Road, Ramsey County;

   b. Senate District 50 Republicans meeting at Oakview Middle School in Andover;

   c. Senate District 42 Republican meeting in Edina;

   d. Second Congressional District Republicans meeting at Hubble House Restaurant in Mantorville;

   e. McLeod County Republican meeting in Hutchinson Senior Center;

   f. Senate District 37 Republican meeting at Empire Town Hall;

g. Senate District 23 Republican meeting in Maple Grove Community Center;

h. Senate District 35 Republican meeting at Jay's Restaurant in Chaska;

i. House District 53A Republicans meeting at Shoreview Community Center;

j. House District 29A Republicans meeting at Hastings Public Library;

k. Senate District 51 Republicans meeting at Lino Lakes City Hall;

l. Senate District 47 Republicans meeting at Lakeland Park Building in Brooklyn Park;

m. Senate District 49 Republicans meeting at Coon Rapids City Hall;

n. 8th Congressional District Republicans meeting at Windtree Restaurant in Barnum;

o. House District 52A Republicans meeting at Fridley Public Library;

p. Meeker County Republicans meeting at Main Street Café in Litchfield; and

q. Senate District 20 Republicans meeting at Cokato.

2. The meetings listed above are among the most important for a elective candidate to attend. The people attending these meetings are the most active party members who attend regular meetings, not simply show up for a convention. These members are more likely to become active in a candidate's campaign, volunteering time, contributing money, and actively promote a candidate to others. Also, these individuals are more likely to vote.

3. As a result of the January 1, 1998 changes to the Code of Judicial Conduct prohibiting judicial candidates from attending or speaking at political party gatherings, I had to cancel all of these speaking engagements. As a result of the January 1, 1998 changes, members of my campaign committee were prohibited from attending these same political party functions for the purpose of distributing my literature, speaking on my behalf, soliciting campaign contributions, stating my views on legal or political issues or seeking a political party endorsement. Many of these meetings were scheduled in public places, but as a result of the January 1, 1998 changes, both I and my campaign members were compelled to avoid these gathering places. As a result of the January 1, 1998 changes a new ethical problem arose regarding the conduct of third parties at Republican political gatherings who might speak on my behalf or distribute my literature.

4. On February 4, 1998, I was a guest on the Jason Lewis Program of KSTP 1500 radio station in St. Paul. As a result of Canon 5's restriction, my ability to discuss the law with Mr. Lewis was very limited. Mr. Lewis asked me if I could give my opinion about the death penalty and several other matters. All of which I had to respond that I could not. Even though the death penalty does not exist in Minnesota, and therefore would seem to be an *undisputed* area of the law, I was convinced that the language of Canon 5 was so broad that I could not discuss the topic without the risk of an ethical violation. Because of the restrictions of Canon 5, I missed the opportunity to announce to the listeners of Mr. Lewis' program my views on a wide variety of legal issues or my prior political party activity or affiliation. In addition, I could not solicit the listeners to make a contribution to my campaign for a

public elective office in Minnesota, I could not solicit the listeners to seek my endorsement for a public elective office in Minnesota from a political party and I could not solicit the listeners to speak on my behalf for a public elective office in Minnesota at political gatherings.

5. On February 11, 1998 I was a guest speaker at a political science class at Northwestern College in Roseville. After a discussion of the rules contained in the Code of Judicial Conduct, one student asked me why I was running for a judicial office when virtually all of the elements considered necessary for success in a normal political contest (the ability to seek political party endorsement, the ability to attend and speak at political gatherings, the ability to state your views on issues or effectively criticize your opponent's decisions, the ability to raise money for a campaign) had been denied to me as a judicial candidate. As a result of the prohibitions contained in Canon 5, I was unable to answer the student's question. Likewise, I was unable to discuss my views on legal issues, unable to inform the students of my prior political party activity or affiliation, unable to solicit campaign contributions from the students, unable to request that the students seek my endorsement from a political party for election to the Supreme Court and unable to request that the students speak on my behalf for election to the Supreme Court at political gatherings – all of this was due to Canon 5's restrictions on my campaign activity.

6. On March 3, 1998, precinct caucuses were held throughout the State of Minnesota. I had attended precinct caucuses as a judicial candidate in 1996 and would have attended on March 3, 1998 if the changes to Canon 5 which took effect on January 1,

1998 had not prohibited my attendance. Minnesota state law provides that anyone may attend a precinct caucus, if only as an observer. The people who would attend a precinct caucus would be the people who live in my immediate neighborhood; in other words, my neighbors. Because of the prohibitions contained in Canon 5, I was prohibited from:

a. attending and speaking at my precinct caucus or at any other precinct caucus;

b. speaking to the caucus participants about my views on legal and political issues;

c. soliciting campaign contributions;

d. identifying myself as having been a member of a political party; and

e. seeking the endorsement of a political party.

7. Because of the prohibitions contained in Canon 5, Cheryl Wersal, Mark Wersal, Corwin Hulbert, and members of my campaign committee Campaign For Justice were prohibited from engaging in these same activities at precinct caucuses or other political gatherings.

8. Canon 5 not only restricted my ability to engage in First Amendment activities of [sic] behalf of my own campaign, but it also specifically enjoined that I not "knowingly permit" others to do on my behalf what I could not directly do under Canon 5. In March 1998, because of this "knowingly permit" clause, I became very concerned that the third parties – over whom I had little influence – would engage in activities – all of which are protected in the First Amendment – which could form the basis of an ethical complaint against me under the "knowingly permit" clause. In March, the Republican Party held conventions at the Senate district or

County level. It came to my attention that campaign materials, apparently from my campaign activities in 1996 and 1997, were handed out during at least one Republican convention by individuals other than myself or my campaign committee.

9. On March 24, 1998 I sent out letters to five individuals asking them to not speak on my behalf or hand out copies of my campaign literature at Republican Conventions. Mr. Jack Graham, who received one of these letter, [sic] told me that he was not running for a judicial office and would exercise his free speech as he wished. Mr. Corwin Hulbert, who received one of the letters, told me that he would accede to my request but that it was an unfair imposition on his free speech rights.

10. Throughout April and May 1998, there were over 120 Republican Conventions held at the Senate District or County level and 8 conventions at the Congressional District level. Because of the prohibitions contained in Canon 5, neither I nor my campaign committee could:

    a. attend or speak on my behalf at these conventions;

    b. inform participants about my views on "disputed" legal or political issues;

    c. solicit campaign contributions from attendees;

    d. identify myself to attendees as a current or former member of a political party;

    e. seek the endorsement of the political party; and

    f. encourage the attendees to speak on my behalf to other Republicans or state my views on "disputed" political or legal issues to other Republicans or to seek my enforcement by a political party.

11. In late March, 1998, I was once again faced with the possibility that the activities of third parties could place me in jeopardy of an ethical violation. I had planned with my campaign committee to speak at a college campus, the Hennepin Technical College on April 4, 1998. However, I discovered that the Senate District 43 Republican Convention would be held the same day in one room on the college campus. Therefore, on March 27, 1998 I wrote a letter to Mr. Edward Cleary, the Director of the Office of Lawyers Professional Responsibility, requesting an advisory opinion. Specifically, I wanted to know if it would be an ethical violation of Canon 5 for myself or members of my campaign committee to hand out campaign literature at a public place if there were a possibility that a third party receiving the literature could carry it into the ongoing Senate District 43 Republican Convention and speak on behalf of my candidacy. See Exhibit 13 attached to this Declaration. On March 31, 1998, Mr. Cleary responded that he would not provide me an advisory opinion solely because I had filed a lawsuit against Mr. Cleary in his official capacity as Executive Director of the Office of Lawyers Professional Responsibility. Because of the prohibitions contained in Canon 5 prohibiting me as a candidate from allowing others to do what I cannot do, neither I nor my committee members distributed literature at Hennepin Technical College on April 4, 1998. If a candidate is not safe advocating his candidacy in a public forum, I became very concerned about how I could campaign without placing myself in jeopardy of having an ethical complaint filed against me period. Because Canon 5 specifically states that judicial candidates are "ethically responsible" for the activities of third parties – third parties who are not even lawyers who would

know or even understand these vague and convoluted ethical rules – I would be subjecting myself to a greater risk of the filing of ethical complaint the more I campaigned, the more I distributed campaign literature, the more I sought support from people for my campaign or the more I engaged in any other activity normally connected with a campaign for public office. Essentially, the more people I convinced to support my candidacy, the more likely it was that those very same people who wished to see me as an Associate Justice on the Supreme Court, if they spoke on my behalf to a political gathering, would end up creating ethical problems for me thereby damaging my campaign.

12. The Republican Party of Minnesota held its convention at the Target Center in Minneapolis from June 18 to June 20, 1998. In the days immediately preceding the convention, I received calls from individuals who wanted to support my candidacy and who were delegates to that convention. In each case, after the individuals told me they wanted to help my candidacy by informing others about me and my candidacy, I had to do something which would be absolutely unthinkable for any other candidate for public office – I had to ask them not to speak to others on my behalf at the convention, not to seek my endorsement, not to tell others my views on legal or political issues and not to identify me as a Republican. As a candidate, I would have been better off if I did not know of their planned activity. Once I knew of their plans, Canon 5 compelled me to inform them not to take action on my behalf otherwise I risked having an ethical complaint filed against me as happened with my 1996 campaign. My notes of my conversations with two of these individuals are attached as Exhibit 21.

13. In the days immediately prior to the State Conventions for the Republican Party, Reform Party and Democratic Party, I discussed with my campaign committee my desire to publicly protest Canon 5's prohibition on my ability to attend a political party convention. The question was whether I could stand with protest signs on the public roadway or sidewalks outside of the convention sites. I would not attend the conventions but I would be outside protesting my inability to attend. My protest would most likely draw the attention of the media to my campaign and to my message which was the Canon 5 needed to be changed. My protest would have been directed at the Minnesota Supreme Court for adopting Canon 5, not the people attending the convention. But because of the threat of an ethical complaint being filed against me based on the activities of third parties who would attend these conventions, the idea was abandoned.

14. I have attended debates held by a debating society called the John Adams Society, which holds regular meetings at which various issues are debated. Members of the Society informed me that because of Canon 5's prohibitions, the Society intended to hold a debate regarding the constitutionality of Canon 5. The John Adams Society scheduled a meeting for June 18, 1998 at a room in the Target Center. The John Adams Society welcomes guests and it was likely that some delegates to the State Convention of the Republican party of Minnesota, who were also meeting in the Target Center, would attend the debate. Again I faced issue of the activities of third parties placing me in jeopardy of an ethical complaint. It was likely that third parties who attended the John Adams Society meeting would return to the Republican Convention and speak to others about my candidacy. It was also

likely that third parties would see me in the Target Center and assume that I was attending the Republican Convention. Finally, it was likely that third parties would mistake the intellectual traditions of a debating society for a statement of my opinion on a disputed legal and political issues. [sic] Each of these activities are arguably grounds for an ethical complaint that I had violated Canon 5. Therefore, I decided not to be [sic] attend the scheduled meeting of the John Adams Society.

15. On July 13, 1998 I again appeared on the Jason Lewis show on KSTP 1500 radio. Similarly to my previous broadcast, I was unable to respond [sic] committee questions which Mr. Lewis had regarding my candidacy or to questions submitted by listeners who called in – many of whom stated they were voters in Minnesota and were frustrated with a lack of information provided in judicial races.

16. On May 20, 1998, I attended the Sentinel Club and gave a speech regarding my candidacy. However, again because of Canon 5's prohibitions, I was unable to talk about any issues related to the campaign other than the fact that I was unable to talk about issues related to the campaign. A copy of the text of my speech is attached as Exhibit 51.

17. On June 13, 1998, shortly before the Republican State Convention, I appeared as a guest of Ron Rosenbaum's show Holding Court on WCCO Radio in Minneapolis. Mr. Joseph Friedberg joined Mr. Rosenbaum in asking me to announce my views on legal and political issues. I was asked what I would like to talk about if I could. And I said the *Scales* case which dealt with the admissibility of confessions. Mr. Friedberg, a criminal lawyer of some notoriety, tried to engage me in a debate about a criminal case by saying the case was excellent law

and I was wrong to criticize it. I was unable to respond to Mr. Friedberg because Canon 5 prohibits candidates from announcing their views on disputed legal and political issues. The audience must have thought I was ignorant or simply dumbfounded at Mr. Friedberg's comments when I was unable to respond.

18. From July 24 through September 15, 1998, I was on radio programs on 35 stations throughout the state including the following: Mankato, New Ulm, Winona, Red Wing, Northfield, Hastings, Jackson, Pipestone, Marshall, Redwood Falls, Willmar, Ortonville, Morris, Alexandria, Albany, St. Cloud, Buffalo, Fergus Falls, Detroit Lakes, Wadena, Brainerd, Aitkin, Duluth, Pelican Lakes, Grand Rapids, Hibbing, Virginia, Ada, Fosston, Crookston, Thief River Falls, Minneapolis, St. Paul, Burnsville and Roseville. A typical example of my radio interviews occurred at the Aitkin radio station KKIN on July 28, 1998. I explained that my candidacy had been reduced to attempting to eliminate Canon 5's prohibitions and why I thought Canon 5 had made judicial elections meaningless. John Tholen of KKIN then asked me, "Can you give us your opinion on gun control?" "Can you tell us your view of the death penalty or land use planning" and similar questions. In response, I could only say that Canon 5 required that I decline to discuss these issues.

19. Whether it was simply a game that radio personalities liked to engage in, or more likely that it was a means to impress upon the radio listeners the restrictions on a judicial candidate's speech, I was asked at almost every radio station a series of questions about legal or political issues which Canon 5 would not allow me to discuss and to which the interviewer expected I could not answer.

20. Perhaps the most frustrating radio interview occurred on September 11, 1998 with Scott Hall of KAXE radio in Grand Rapids. At the interview, Mr. Hall had a news release provided to radio stations and other press organizations by the Minnesota Women's Lawyers dated September 4, 1998. See Exhibit 143. The news release attached lists of questions for a press organization to ask judicial candidates and says, "The enclosed list of questions . . . are approved for use in public forums by the Executive Secretary of the Minnesota Board on Judicial Standards. These questions and questions like them can be answered without concern about violating ethical Canon 5." After I had discussed that my candidacy was an effort to change Canon 5 and why I thought Canon 5 had made judicial elections meaningless, Mr. Hall disagreed and said "the Minnesota Women's Lawyers and the Board on Judicial Standards says you can answer the list of questions." Mr. Hall asked me two questions contained on the list – "As a judge, who are the people you serve and what does it mean to give good service to them." This is question #6 on the list of proposed questions. I answered that a judge serves the people of Minnesota, but I declined to answer the remaining part of the question. For me to answer what I thought would be "good service", I would have to describe my judicial philosophy against judicial activism and the need for strict construction of the Constitution. I knew from my legal research on Canon 5 that ethical complaints had been filed against judicial candidates in other states under the "announce" clause based on a candidate's discussion of judicial philosophy. I refused to answer and tried to explain my reason to Mr. Scott but he was not satisfied. Mr. Scott then asked me question #9 on the list, "If you were

given 50 million dollars and were told that it must be used to address the issues of crime and violence, what would you do with it?" Again, I declined to answer. The question raises numerous legal and political issues. The first is whether judges should be allocating money at all – it would seem to be a legislative issue. And if I said the money should be used for gun control or gun registration or if I said it should be used to build more prisons, as opposed to expanded probation, or if I said the money should be used to establish the death penalty, anyone who thought I was "announcing" my views on these disputed legal and political issues could file an ethical complaint against me.

21. Mr. Scott was very frustrated. He said that if the Executive Secretary of the Minnesota Board on Judicial Standards had approved these questions I should be able to answer them. I tried to explain that different people might have different views on when my statements were announcing my views on legal and political issues and that I had to protect myself against all possible ethical complaints. (Moreover, after this experience, I concluded that the Board on Judicial Standard's list would be more helpful to me in avoiding an ethical complaint, if it prescribed not a list of questions I could answer, but rather a list of answers I could give to any question.)

22. Mr. Scott was very unhappy – and I can only imagine what was going through the minds of the listeners to that program. Again, Canon 5 prevented me from stating my views on legal and political issues and this provides a perfect example of how these rules damaged my candidacy. In addition Canon 5 prohibited me from discussing during these radio interviews my prior political party

activity or affiliation, from making a general solicitation of campaign funds, or from asking the listeners to speak to others on my behalf because of the possibility it would place me in jeopardy of having ethical complaint [sic] filed against me based on third party activities.

23. Between July 24 and September 15, 1998 I personally spoke to editors or reporters from newspapers in 113 towns including the following: Minneapolis, St. Paul, Caledonia, Preston, Austin, Albert Lea, Winona, Rochester, Kassou, Dodge Center, Owatonna, Plainview, Kenyou, Fairbault, Lake City, Red Wing, Cannon Falls, Northfield, Hastings, Blue Earth, Fairmont, Jackson, Worthington, Laverne, Pipestone, Slayton, Windom, St. James, New Ulm, Sleepy Eye, Springfield, Tracy, Ivanhoe, Marshall, Redwood Falls, Fairfax, Gibbon, Winthrop, Gaylord, Arlington, St. Peter, LeCenter, Le Sueur, Belle Plaine, Jordan, Chaska, Waconia, Norwood, Glencoe, Hutchinson, Hector, Olivia, Renville, Granite Falls, Montevideo, Madison, Appleton, Ortonville, Benson, Willmar, Litchfield, Buffalo, Monticello, Glenwood, Morris, Herman, Wheaton, Elbow Lake, St. Cloud, Albany, Sauk Centre, Alexandria, Long Prairie, Browerville, Clarissa, Parkers Prairie, Staples, Wadena, New York Mills, Perham, Detroit Lakes, Pelican Rapids, Fergus Falls, Battle Lake, Park Rapids, Mahnomen, Bemidji, Bagley, Stillwater, Lindstrom, Elk River, Big Lake, Foley, Milaca, Princeton, Cambridge, Mora, Pine City, Sandstone, Little Falls, Brainerd, Crosby, Ironton, Aitkin, Grand Rapids, Hibbing, Chisholm, Virginia, Cook, Tower, Ely, Two Harbors, and Duluth.

24. When I met with newspaper editors and reporters, I would explain that my candidacy was an effort to eliminate Canon 5's unconstitutional prohibitions

on a judicial candidate's campaign activities and why I thought Canon 5 had made judicial elections meaningless. However, because of Canon 5, I could not discuss my candidacy to the Supreme Court beyond the issue of Canon 5's unconstitutional prohibitions. I met with over 130 reporters or editors; however, I was unable to discuss my views on legal and political issues, tell them of my prior political party affiliation, or ask them for an endorsement which are common on newspaper editorial pages at elections.

25. On July 7, 1998, I held a press conference to announce my candidacy against Associate Justice Alan Page. In my speech I talked about how the Supreme Court including Associate Justice Page, had successfully squelched the ability of their opponents to campaign against them through Canon 5's unconstitutional prohibitions. The reporter from the Minneapolis *Star Tribune* said to me that my discussion about being silenced will only get my candidacy so far. Eventually, he maintained I would have to discuss why the voters should elect me and, if I couldn't define that, my candidacy was done.

26. Had I not been constrained by the Supreme Court's adoption of the unconstitutional provisions in Canon 5, I would have discussed several of Justice Page's decisions in criminal cases. In my opinion, these decisions were not properly decided under the Minnesota or U.S. Constitutions, were not within the mainstream of legal opinion and that Mr. Page "was soft" on crime. Had I been able to discuss my views on these legal issues, the reporter from the *Star Tribune* would not have made that comment and perhaps my candidacy would have survived.

27. In August 1998 I was asked by Mr. Henry Braddock if I would attend and speak at a gathering of "constitutionalists". I knew Mr. Braddock as a member of the John Adams Society. I agreed. As Mr. Braddock was giving me directions to attend, I discovered that this meeting would occur immediately before a convention of the Minnesota Taxpayers Party on the same site and would most likely be attended by the same people. As a result, I declined Mr. Braddock's invitation because of its nexus to a political party gathering. Mr. Braddock and his group wanted to hear me speak about my candidacy for a public office in Minnesota. However, Canon 5 requires that lawyers who are judicial candidates divorce themselves from any affiliation with a political party in order to avoid the filing of an ethical complaint. Mr. Braddock offered that the group would meet at a different site. Nonetheless, I still had to decline.

28. In mid-August, 1998, I received a letter from April Guerin dated August 10, 1998. See, Exhibit 28. Ms. Guerin asked me to send her information regarding my candidacy which she would then use in the newsletter to Republicans in Senate District 43. Ms. Guerin, a Republican, was asking me for information about my campaign so that she could inform Republicans about my candidacy, asked them for their support, and for their endorsement of my candidacy. Again because of the threat that Ms. Guerin's activities could place me in jeopardy of having an ethical complaint filed against me, I did not respond to the request. If I had not been constrained by Canon 5, I would [sic] gladly provided these materials to Ms. Guerin.

29. Had the restrictions of Canon 5 not existed, I would have been able to conduct a real campaign for judicial office:

    a. I would have attended and spoken at the monthly meetings of the Senate District or County Republican organizations as I had scheduled to do in January and February of 1998;

    b. I would have gone to precinct caucuses on March 3, 1998;

    c. I would have distributed campaign materials at the precincts;

    d. I would have had Campaign Committee members and volunteers go to precinct caucuses to:

        i. inform people about my candidacy;

        ii. announce my views on legal issues;

        iii. inform people of my past political party associations;

        iv. ask people to speak on my behalf to others;

        v. ask people to seek my endorsement; and

        vi. ask people for campaign contributions;

    e. I would have attended and spoken at senate district/county conventions, the 8 congressional district conventions and the State Convention of the Republican Party;

    f. I would have had campaign materials distributed at these conventions and committee members and volunteers would have helped me. Again, the purpose would have been to:

i. inform people about my candidacy;

ii. announce my views on legal issues;

iii. inform people of my past political party associations;

iv. ask people to speak on my behalf to others;

v. ask people to seek my endorsement; and

vi. ask people for campaign contributions.

30. I believe that, but for the restrictions imposed by Canon 5 on January 1, 1998, I would have been endorsed by the Republican Party of Minnesota at its state convention.

31. If I had been endorsed by the Republican Party, I would have used that endorsement as a means of establishing credibility with the people of Minnesota and the press, as well as other groups that consider endorsing judicial candidates, such as police groups, prosecutor groups, single issue interest groups, and other political parties.

32. I believe that if I as a candidate had been able to solicit campaign funds, that contributions to my campaign would have been significant and sufficient to run for a state wide office.

33. After the conventions, I would have again campaigned throughout the state speaking to reporters from newspapers, radio stations and television stations as I did. Without the ethical prohibitions of Canon 5, I would have been able to talk about more than why I could not talk about legal issues. I think the voters of Minnesota would have had far more information than is allowed under the current system and that the voters could make an intelligent choice between candidates when they voted in the primary.

34. It is my experience as a candidate for a state wide judicial office that it is virtually impossible to [sic] anyone to run against an incumbent and win given the current restrictions of Canon 5:

a. To successfully run for a state wide office against an incumbent, candidates must be able to seek the support of the state wide organization of a political party. No other group has a state wide mechanism for supporting a candidacy. By preventing political parties from supporting judicial candidates, the Minnesota Supreme Court has made it virtually impossible to defeat an incumbent judge;

b. To successfully run for a state wide office against an incumbent, candidates must be able to discuss issues and effectively criticize their opponent. The public wants more information so they can make an intelligent decision when voting.

c. To successfully run for a state wide office against an incumbent, candidates must be able to personally solicit money for their campaigns. To prevent candidates from effectively raising campaign funds is simply a means of negating the constitutional requirements of elections. People want and expect candidates for office to ask for money. There is no reason that the "harm" created by the solicitation of campaign funds is more acute for the judicial branch than it is for the legislative or executive branch. This harm could be almost entirely avoided by other means such as limitations on how much an individual can give and the use of a campaign committee to actually collect the money and keep the names of donors from the candidate;

d. To successfully run for a state wide office against an incumbent, candidates must be able to encourage voters to tell others about their candidacy. The candidate cannot possibly talk to each voter individually or each voter outside of the organizations the voter belongs to, such as a political party. Canon 5, which creates an ethical violation based on the actions of third parties, make any candidate a target for opponents; and

e. It is my experience as a candidate for state wide judicial office, over the period from January 1996 to September 15, 1998, that voters want more information on judicial candidates. At one campaign stop, on July 28, 1998 I had the opportunity to meet people having breakfast at a local restaurant in Aitkin, Minnesota. All of them told me of their frustration with judicial elections, that they did not have enough information. Having talked to hundreds of voters, I heard again and again, the almost universal complaint that they did not know who the judicial candidates were or why they should vote for them.

35. Based on my experience as a candidate for state wide judicial office in the years 1996, 1997 and 1998, the "announce" clause contained in Canon 5 creates an enormous barrier for a candidate. During my candidacy every piece of campaign literature, every prepared speech and every opinion piece for a newspaper went through numerous drafts as I was required to review it with lawyers to avoid any possible violation of Canon 5 while still trying to say something meaningful about my campaign and the issues. Campaign materials were drafted with

the specific purpose of trying not to state my opinion about legal or political issues. Even so, others said that I had stated my opinion on legal issues, resulting in an ethical complaint against me in 1996. I felt as a candidate I was constantly looking over my shoulder waiting for yet another ethical complaint to be filed.

36. After a Minnesota lawyers filed ethical complaint against me in 1996, I became more and more worried that an ethical complaint would be filed against me in 1998 and derail a campaign in which I had invested numerous hours over a period of years. In 1998, some of my campaign materials included a statement "neither in this letter, nor the attachment, have I stated my opinion; but I have tried to present facts and the arguments of others so you may decide for yourself what to believe. Please do not confuse my having presented arguments, or the inadequacy of my presentation in this limited space, with my belief in the argument." See, Exhibit 41.

37. This problem was even more severe when I was talking directly with the voters or with the press. In these instances, I would be asked questions I was expected to answer; however, I was not going to have the ability to have attorneys carefully draft my answer before giving a response to the voter of the street or an interviewer on a radio program. As a result, I often declined to answer questions that perhaps I should have answered because it was safer to decline to respond to such a question rather than risk the filing of an ethical complaint.

38. A true and correct copy of my address to Republican Party Convention Delegates in 1996 is attached hereto as Exhibit 1.

39. A true and correct copy of my 1997 Convention speech given to Congressional District Conventions is attached hereto as Exhibit 2.

40. A true and correct copy of the Notice of Motion and Motion dated February 22, 1998 is attached hereto as Exhibit 3.

41. A true and correct copy of the Order denying Plaintiffs' Motion for a Temporary Restraining Order dated March 3, 1998 is attached hereto as Exhibit 4.

42. A true and correct copy of Plaintiffs' Notice of Appeal dated March 3, 1998 is attached hereto as Exhibit 5.

43. A true and correct copy of Plaintiffs' Motion Re: Rule 8 Injunctive Relief dated March 3, 1998 is attached hereto as Exhibit 6.

44. A true and correct copy of the denial of Plaintiff's [sic] Motion for Injunctive Relief is attached hereto as Exhibit 7.

45. A true and correct copy of the Memorandum Opinion and Order dated March 9, 1998 denying Plaintiffs' Motion for Temporary Restraining Order is attached hereto as Exhibit 8.

46. A true and correct copy of Plaintiffs' Rule 8 Motion Re: State Senate District and County Conventions dared [sic] March 9, 1998 is attached hereto as Exhibit 9.

47. A true and correct copy of the denial of Plaintiff's Rule 8 Motion dated Mach 13, 1998 is attached hereto as Exhibit 10.

48. A true and correct copy of letters sent by Greg Wersal to certain Republican delegates requesting them not to speak on my behalf is attached hereto as Exhibit 11.

49. A true and correct copy of the Request for Advisory Opinion dated March 27, 1998 is attached hereto as Exhibit 12.

50. A true and correct copy of the Office of Lawyers Professional Responsibility's (OLPR's) denial of the Request for Advisory Opinion is attached hereto as Exhibit 13.

51. A true and correct copy of Plaintiff's Rule 8 Motion Re: Congressional District Conventions dated April 15, 1998 is attached hereto as Exhibit 14.

52. A true and correct copy of the denial of Plaintiff's Motion dated April 24, 1998 is attached hereto as Exhibit 15.

53. A true and correct copy of the Schedule of 1998 Republican Congressional District Conventions is attached hereto as Exhibit 16.

54. A true and correct copy of the Application for Injunctive Relief Pending Petition for Writ of Certiorari dated June 4, 1998 is attached hereto as Exhibit 17.

55. A true and correct copy of the RPM's Convention Edition Newsletter dated May/June 1998 dated is attached hereto as Exhibit 18.

56. A true and correct copy of the City Pages article dated June 17, 1998 is attached hereto as Exhibit 19.

57. A true and correct copy of the Notification of Receipt of Application for Injunctive Relief dated June 18, 1998 is attached hereto as Exhibit 20.

58. A true and correct copy of Notes of Greg Wersal's phone conversations with two supporters in the days preceding the Republican State Convention on June 18, 1998 are attached hereto as Exhibit 21.

59. A true and correct copy of Bill Mohrman's letter to RPM Chairman William A. Cooper dated June 18, 1998 is attached hereto as Exhibit 22.

60. A true and correct copy of the Minneapolis Star Tribune ("Star Tribune" article dated June 20, 1998 is attached hereto as Exhibit 23.

61. A true and correct copy of the Minneapolis Star Tribune article date June 21, 1998 is attached hereto as Exhibit 24.

62. A true and correct copy of the Star Tribune front cover dated June 20, 1998 is attached hereto as Exhibit 25.

63. A true and correct copy of Greg Wersal's letter to the Star Tribune dated June 26, 1998 is attached hereto as Exhibit 26.

64. A true and correct copy of the materials sent by the Board of Judicial Standards to Greg Wersal under a cover letter dated July 1998 is attached hereto as Exhibit 27.

65. A true and correct copy of April Guerin's letter to Greg Wersal dated August 10, 1998 is attached hereto as Exhibit 28.

66. A true and correct copy of the Board of Judicial Standards Memorandum to 1998 Judicial Candidates dated August 20, 1998 is attached hereto as Exhibit 29.

67. A true and correct copy of Mark Wersal's letter to Republican BPOU chairpersons is attached hereto as Exhibit 30.

68. A true and correct copy of Adeline Lundquist letter to Greg Wersal postmarked September 16, 1998 is attached hereto as Exhibit 31.

69. A true and correct copy of the James E. Ramette's letter to Greg Wersal dated October 5, 1998 is attached hereto as Exhibit 32.

70. A true and correct copy of A.M. Keith's Letter to Greg Wersal dated October 20, 1998 is attached hereto as Exhibit 33.

71. A true and correct copy of the Star Tribune article dated November 12, 1997 is attached hereto as Exhibit 34.

72. A true and correct copy of the City Pages article dated November 19, 1997 is attached hereto as Exhibit 35.

73. A true and correct copy of the map used by Greg Wersal during the 1998 campaign is attached hereto as Exhibit 36.

74. A true and correct copy of Greg Wersal's letter to the editor dated February 10, 1998 is attached hereto as Exhibit 37.

75. A true and correct copy of the Star Tribune article dated February 26, 1998 is attached hereto as Exhibit 38.

76. A true and correct copy of Lee Larkey's letter to the St. Cloud Times dated March 2, 1998 is attached hereto as Exhibit 39.

77. A true and correct copy of the St. Cloud Times editorial dated March 30, 1998 is attached hereto as Exhibit 40

78. A true and correct copy of Greg Wersal's campaign literature are attached hereto as Exhibit 41.

79. A true and correct copy of the St. Paul Pioneer Press ("Pioneer Press") editorial dated May 1, 1998 is attached hereto as Exhibit 42.

80. A true and correct copy of Greg Wersal's opinion piece faxed on April 28, 1998, and later printed in the *Star Tribune* on May 3, 1998 is attached hereto as Exhibit 43.

81. A true and correct copy of Greg Wersal's letter to the Pioneer Press written in response to the May 1, 1998 editorial is attached hereto as Exhibit 44.

82. A true and correct copy of the Star Tribune Commentary page dated May 3, 1998 is attached hereto as Exhibit 45.

83. A true and correct copy of the Greg Wersal's letter to the Pioneer Press dated May 4, 1998 is attached hereto as Exhibit 46.

84. A true and correct copy of Noah Rosenbloom's letter to the Star Tribune dated May 8, 1998 is attached hereto as Exhibit 47.

85. A true and correct copy of D.J. Tice's Pioneer Press editorial dated May 6, 1998 is attached hereto as Exhibit 48.

86. A true and correct copy of Greg Wersal's opinion piece faxed May 11, 1998 is attached hereto as Exhibit 49.

87. True and correct copies of two of Greg Wersal's opinion pieces faxed May 13, 1998 is [sic] attached hereto as Exhibit 50.

88. A true and correct copy of Greg Wersal's speech to the Sentinel Club on May 20, 1998 is attached hereto as Exhibit 51.

89. A true and correct copy of a sample "Wersal for Supreme Court" campaign logo used on banner is attached hereto as Exhibit 52.

90. A true and correct copy of Greg Wersal's letter to the Pioneer Press dated May 19, 1998 is attached hereto as Exhibit 53.

91. A true and correct copy of Greg Wersal's opinion piece faxed May 20, 1998 is attached hereto as Exhibit 54.

92. A true and correct copy of Greg Wersal's formal speech announcing his candidacy on May 27, 1998 is attached hereto as Exhibit 55.

93. A true and correct copy of Greg Wersal's press release dated May 27, 1998 announcing his candidacy is attached hereto as Exhibit 56.

94. A true and correct copy of Greg Wersal's opinion piece faxed June 15, 1998 is attached hereto as Exhibit 57.

95. A true and correct copy of Greg Wersal's Pioneer Press editorial dated June 16, 1998 is attached hereto as Exhibit 58.

96. A true and correct copy of the City Pages article dated June 17, 1998 is attached hereto as Exhibit 59.

97. A true and correct copy of Dorothy McGlanchlin's letter to Greg Wersal dated June 20, 1998 is attached hereto as Exhibit 60.

98. A true and correct copy of Bruce A. Peterson's letter to the Star Tribune dated June 12, 1998 is attached hereto as Exhibit 61.

99. A true and correct copy of Greg Wersal's letter to the Star Tribune dated June 22, 1998 is attached hereto as Exhibit 62.

100. A true and correct copy of Greg Wersal's letter to Peg Cullen dated June 22, 1998 is attached hereto as Exhibit 63.

101. A true and correct copy of John Hultquist's letter to Joan A. Growe dated June 26, 1998 is attached hereto as Exhibit 64.

102. A true and correct copy of Greg Wersal's press release dated June 26, 1998 is attached hereto as Exhibit 65.

103. True and correct copies of three of Greg Wersal's opinion pieces faxed June 28, 1998 to newspapers throughout Minnesota are attached hereto as Exhibit 66.

104. A true and correct copy of the Waconia County News article is attached hereto as Exhibit 67.

105. A true and correct copy of the Notice of Appointment of Joan Ericksen Lancaster to the Minnesota Supreme Court dated July 1, 1998 is attached hereto as Exhibit 68.

106. A true and correct copy of Greg Wersal's fax to Bernie Steele dated July 2, 1998 is attached hereto as Exhibit 69.

107. A true and correct copy of the Northern Watch editorial dated July 4, 1998 is attached hereto as Exhibit 70.

108. A true and correct copy of Greg Wersal's press release dated July 7, 1998 is attached hereto as Exhibit 71.

109. A true and correct copy of Greg Wersal's Affidavit of Candidacy dated July 7, 1998 is attached hereto as Exhibit 72.

110. A true and correct copy of Greg Wersal's announcement speech dated July 7, 1998 is attached hereto as Exhibit 73.

111. A true and correct copy of the Star Tribune article dated July 8, 1998 is attached hereto as Exhibit 74.

112. A true and correct copy of the Minnesota Lawyer article and an article from the *St. Paul Pioneer Press* each dated July 8, 1998 is attached hereto as Exhibit 75.

113. True and correct copies of Greg Wersal's campaign materials are attached hereto as Exhibit 76.

114. True and correct copies of Greg Wersal's opinion pieces during the 1998 campaign are attached hereto as Exhibit 77.

115. A true and correct copy of the Pioneer Press article dated July 12 1998 is attached hereto as Exhibit 78.

116. A true and correct copy of Greg Wersal's letter to Roger Peterson dated July 17, 1998 is attached hereto as Exhibit 79.

117. A true and correct copy of Dennis McGrath's letter to Greg Wersal dated July 23, 1998 is attached hereto as Exhibit 80.

118. A true and correct copy of Marge Winkelman's letter to Greg Wersal dated July 28, 1998 is attached hereto as Exhibit 81.

119. A true and correct copy of Erin Bishop's letter to Greg Wersal is attached hereto as Exhibit 82.

120. A true and correct copy of Greg Wersal's letter to Tom Pritchard dated July 29, 1998 is attached hereto as Exhibit 83.

121. A true and correct copy of Greg Wersal's letter to James Tarsney dated July 30, 1998 is attached hereto as Exhibit 84.

122. A true and correct copy of the Fairbault County Register article dated August 10, 1998 and the Albert Lea article are attached hereto as Exhibit 85.

123. A true and correct copy of Greg Wersal's letter to Richard Hardin dated August 13, 1998 is attached hereto as Exhibit 86.

124. A true and correct copy of Greg Wersal's letter to Dean Trippler dated August 17, 1998 is attached hereto as Exhibit 87.

125. A true and correct copy of a Minnesota State Fair map which includes Greg Wersal's campaign logo is attached hereto as Exhibit 88.

126. A true and correct copy of Greg Wersal's fax to Pat Sweeney of the *St. Paul Pioneer Press* dated August 20, 1998 is attached hereto as Exhibit 89.

127. A true and correct copy of Crystal/Robbinsdale, New Hope/Golden Valley Sun-Post article dated August 19, 1998 is attached hereto as Exhibit 90.

128. A true and correct copy of the Brooklyn Center, Brooklyn Park Sun-Post article dated August 19, 1998 is attached hereto as Exhibit 91.

129. A true and correct copy of the Minnesota Lawyer article dated August 21, 1998 is attached hereto as Exhibit 92.

130. A true and correct copy of the Minnesota Lawyer article dated late August, 1998 is attached hereto as Exhibit 93.

131. A true and correct copy of the Star Tribune Voter's Guide confirmation letter postmarked August 31, 1998 is attached hereto as Exhibit 94.

132. A true and correct copy of the Minnesota Lawyer article dated August 28, 1998 is attached hereto as Exhibit 95.

133. A true and correct copy of Greg Wersal's letter to Jocelyn Knoll dated September 1, 1998 is attached hereto as Exhibit 96.

134. A true and correct copy of Cheryl Wersal's fax to Jerry Franzen dated September 1, 1998 is attached hereto as Exhibit 97.

135. A true and correct copy of the Pioneer Press Primary Election Voter's Guide dated September 3, 1998 is attached hereto as Exhibit 98.

136. A true and correct copy of the Minnesota Lawyer article dated September 4, 1998 is attached hereto as Exhibit 99.

137. A true and correct copy of the Star Tribune article dated September 7, 1998 is attached hereto as Exhibit 100.

138. A true and correct copy of Greg Wersal's letter to Midge Dean Dated September 8, 1998 is attached hereto as Exhibit 101.

139. A true and correct copy of Greg Wersal's letter to Susan Blanch dated September 8, 1998 is attached hereto as Exhibit 102.

140. A true and correct copy of Greg Wersal's campaign advertisement in the Crystal/Robbinsdale, New Hope/Golden Valley Sun-Post dated September 9, 1998 is attached hereto as Exhibit 103.

141. A true and correct copy of Deb Olson's letter to Greg Wersal postmarked September 10, 1998 is attached hereto as Exhibit 104.

142. A true and correct copy of the Star Tribune article dated September 10, 1998 is attached hereto as Exhibit 105.

143. A true and correct copy of the Star Tribune Primary Election Voter's Guide dated September 11, 1998 is attached hereto as Exhibit 106.

144. A true and correct copy of William E. Mullin's letter to the Star Tribune dated September 11, 1998 is attached hereto as Exhibit 107.

145. A true and correct copy of Greg Wersal's letter to the Star Tribune dated September 11, 1998 is attached hereto as Exhibit 108.

146. A true and correct copy of Jennifer J. Schnack's letter to the Star Tribune dated September 12, 1998 is attached hereto as Exhibit 109

147. A true and correct copy of Greg Wersal's press release dated September 14, 1998 is attached hereto as Exhibit 110.

148. A true and correct copy of Greg Wersal's primary election invitation to supporters dated September 8, 1998 is attached hereto as Exhibit 111.

149. A true and correct copy of Greg Wersal's letter dated September 22, 1998 is attached hereto as Exhibit 112.

150. A true and correct copy of Greg Wersal's press release dated October 16, 1998 is attached hereto as Exhibit 113.

151. A true and correct copy of the Minnesota Lawyer article dated September 18 1998 is attached hereto as Exhibit 114.

152. A true and correct copy of the Star Tribune article dated October 27, 1998 is attached hereto as Exhibit 115.

153. A true and correct copy of Greg Wersal's letter to the Star Tribune dated October 27, 1998 is attached hereto as Exhibit 116.

154. A true and correct copy of the Star Tribune endorsement of Alan Page for the Minnesota

Supreme Court dated October 29, 1998 is attached hereto as Exhibit 117.

155. A true and correct copy of the Pioneer Press article dated November 1, 1998 is attached hereto as Exhibit 118.

156. A true and correct copy of the Star Tribune article dated November 3, 1998 is attached hereto as Exhibit 119.

157. A true and correct copy of Greg Wersal's letter to Steven Rosenfeld dated December 1, 1998 is attached hereto as Exhibit 120.

158. True and correct copies of Greg Wersal's 1999 educational materials are attached hereto as Exhibit 121.

159. A true and correct copy of the Star Tribune article dated May 28, 1998 is attached hereto as Exhibit 122.

160. A true and correct copy of Corwin Hulbert's letter to the Star Tribune dated May 17, 1998 is attached hereto as Exhibit 123.

161. A true and correct copy of the Redwood Gazette article dated May 26, 1998 is attached hereto as Exhibit 124.

162. A true and correct copy of Greg Wersal's announcement invitation is attached hereto as Exhibit 125.

163. A true and correct copy of the Sleepy Eye newspaper article dated mid-June, 1998 is attached hereto as Exhibit 126.

164. A true and correct copy of Star Tribune Article dated June 27, 1998 is attached hereto as Exhibit 127.

165. A true and correct copy of the Star Tribune article dated May 1, 1998 is attached hereto as Exhibit 128.

166. A true and correct copy of the Pioneer Press article dated May 1, 1998 is attached hereto as Exhibit 129.

167. A true and correct copy of the Star Tribune article dated June 24, 1998 is attached hereto as Exhibit 130.

168. A true and correct copy of the Star Tribune article dated March 3, 1998 is attached hereto as Exhibit 131.

169. A true and correct copy of Bill Cooper's Pioneer Press editorial dated April 9, 1998 is attached hereto as Exhibit 132.

170. A true and correct copy of the Star Tribune article dated June 30, 1998 is attached hereto as Exhibit 133.

171. A true and correct copy of Greg Wersal's letter to Aaron Frederickson dated January 23, 1998 is attached hereto as Exhibit 134.

172. A true and correct copy of the Crystal-New Hope East Plymouth League of Women Voter's February – March 1998 Newsletter is attached hereto as Exhibit 135.

173. A true and correct copy of Waren Higgins' fax to Greg Wersal dated March 18, 1998 is attached hereto as Exhibit 136.

174. A true and correct copy of Waren Higgins' fax to Greg Wersal dated April 21, 1998 is attached hereto as Exhibit 137.

175. A true and correct copy of the Minnesota Family Council Newsletter dated May 1998 is attached hereto as Exhibit 138.

176. A true and correct copy of Greg Wersal's letter to Helen Palmer dated May 4, 1998 is attached hereto as Exhibit 139.

177. A true and correct copy of the League of Women Voter's Judicial Questionnaire sent to Greg Wersal under Judy Duffy's cover letter dated July 12, 1998 is attached hereto as Exhibit 140.

178. A true and correct copy of Stacey Poper Home's letter to Greg Wersal dated July 23, 1998 is attached hereto as Exhibit 141.

179. A true and correct copy of the League of Women Voter's letter to Greg Wersal dated August 2, 1998 is attached hereto as Exhibit 142.

180. A true and correct copy of Minnesota Women Lawyers New Advisory dated September 4, 1998 is attached hereto as Exhibit 143.

181. A true and correct copy of David Skillings letter to Greg Wersal dated July 14, 1998 is attached hereto as Exhibit 144.

182. A true and correct copy of the Coalition of Minnesota Business, Inc.'s letter to Greg Wersal dated October 22, 1998 is attached hereto as Exhibit 145.

183. A true and correct copy of the League of Women Voter's letter to Greg Wersal dated November 30, 1998 is attached hereto as Exhibit 146.

184. A true and correct copy of "Changing Minnesota's Judges" sent under a cover letter dated November 6, 1998 is attached hereto as Exhibit 147.

185. A true and correct copy of Article 7, Section 6 of the Minnesota Constitution and Minnesota Statutes Sections 2116.01 and 2116.02 is attached hereto as Exhibit 148.

186. A true and correct copy of the Appointment of members of the Judicial Recall Rules Committee dated February 11, 1998 is attached hereto as Exhibit 149.

187. A true and correct copy of the Promulgation of Grounds for Judicial Recall dated July 1, 1998 is attached hereto as Exhibit 150.

188. A true and correct copy of Greg Wersal's press release dated July 15, 1998 is attached hereto as Exhibit 152.

189. A true and correct copy of the Motion for a Public Hearing, Motion for Reconsideration of Grounds for Judicial Recall, Motion for present Oral Argument, Motion for Release dated July 15, 1998 is attached hereto as Exhibit 152.

190. A true and correct copy of Greg Wersal's speech dated July 15, 1998 is attached hereto as Exhibit 153.

191. A true and correct copy of Greg Wersal's press release dated July 24, 1998 is attached hereto as Exhibit 154.

192. A true and correct copy of fax log reports dated July 24, 1998 is attached hereto as Exhibit 155.

193. A true and correct copy of the Star Tribune article dated July 25, 1998 is attached hereto as Exhibit 156.

194. A true and correct copy of the Norwood Young America Times article dated July 30, 1998 is attached hereto as Exhibit 157.

195. A true and correct copy of Greg Wersal's press release dated August 19, 1998 is attached hereto as Exhibit 158.

196. A true and correct copy of the Page Education Foundation letter dated November 5, 1998 is attached hereto as Exhibit 159.

197. A true and correct copy of the City Pages article dated July 30, 1997 is attached hereto as Exhibit 160.

198. A true and correct copy of the Page Education Foundation's fundraising totals is attached hereto as Exhibit 161.

199. A true and correct copy of Greg Wersal's letter to Minnesota Board of Judicial Standards dated August 18, 1998 is attached hereto as Exhibit 162.

200. A true and correct copy of Greg Wersal's Ethical Complaint against Alan Page dated August 18, 1998 is attached hereto as Exhibit 163.

201. A true and correct copy of DePaul Willette's letter to Greg Wersal dated August 19, 1998 is attached hereto as Exhibit 164.

202. A true and correct copy of the Star Tribune article dated August 20, 1998 is attached hereto as Exhibit 165.

203. A true and correct copy of the St. Paul Legal Ledger article dated August 20, 1998 is attached hereto as Exhibit 166.

204. A true and correct copy of Greg Wersal's letter to DePaul Willette of the board on Judicial Standards and DePaul Willette's letter to Greg Wersal dated August 26, 1998 is attached hereto as Exhibit 167.

205. A true and correct copy of Alfred Stanberry's letter to Justice Kathleen Blatz dated September 17, 1998 is attached hereto as Exhibit 168.

206. A true and correct copy of the Alfred Stanberry's letter to the Internal Revenue Service dated October 9, 1998 is attached hereto as Exhibit 169.

207. True and correct copies of two of Greg Wersal's commentaries sent to newspapers throughout the state are attached hereto as Exhibit 170.

208. A true and correct copy of DePaul Willette's letter to Greg Wersal dated October 14, 1998 is attached hereto as Exhibit 171.

209. A true and correct copy of Additional Ethical Complaint against Alan Page dated November 5, 1998 is attached hereto as Exhibit 172.

210. A true and correct copy of DePaul Willette's letter to Greg Wersal dated November 10, 1998 is attached hereto as Exhibit 173.

211. A true and correct copy of Alfred Stanburg's fax to Greg Wersal dated December 10, 1998 is attached hereto as Exhibit 174.

212. A true and correct copy of the Board of Judicial Standards' presentation to the Hennepin County Bar Association Professional Conduct Committee dated April 17, 1998 is attached hereto as Exhibit 175.

213. A true and correct copy of the Minnesota State Bar Association ("MSBA") Judicial Elections Task Force Recommendations adopted June 19, 1998 is attached hereto as Exhibit 176.

214. A true and correct copy of the Hennepin Lawyer article dated October 1997 is attached hereto as Exhibit 177.

215. A true and correct copy of Timothy J. Eiden's letter to Judge Marilyn K. Knudson and Michael Orge

dated October 15, 1997 is attached hereto as Exhibit 178.

216. A true and correct copy of the Star Tribune article dated June 2, 1998 is attached hereto as Exhibit 179.

217. A true and correct copy of the MSBA Court Rules and Administration Meeting summary dated June 17, 1997 is attached hereto as Exhibit 180.

218. A true and correct copy of the Bench & Bar article dated April 1998 is attached hereto as Exhibit 181.

219. A true and correct copy of the MSBA Executive Committee Report on proposed amendments of Canon 5 faxed to Greg Wersal June 10, 1998 is attached hereto as Exhibit 182.

220. A true and correct copy of Greg Wersal's press release dated late June, 1998 is attached hereto as Exhibit 183.

221. A true and correct copy of the MSBA 1998 Convention agenda is attached hereto as Exhibit 184.

222. A true and correct copy of the Bench & Bar article dated May/June 1998 is attached hereto as Exhibit 185.

223. A true and correct copy of the Motion to Amend the Recommendation of the Executive Committee regarding Canon 5 is attached hereto as Exhibit 186.

224. A true and correct copy of the Bench and Bar article dated May/June 1998 is attached hereto as Exhibit 187.

225. A true and correct copy of the Bench & Bar article dated August 1998 is attached hereto as Exhibit 188.

226. A true and correct copy of Greg Wersal's press release dated June 26, 1998 is attached hereto as Exhibit 189.

227. A true and correct copy of the George Soule's letter to Greg Wersal dated August 24, 1998 is attached hereto as Exhibit 190.

228. A true and correct copy of the Bench & Bar article dated October 1998 is attached hereto as Exhibit 191.

229. A true and correct copy of the June 13, 1998 WCCO audio tape is attached as Exhibit 192.

230. A true and correct copy of the "Almanac" program from July 10, 1998 is attached as Exhibit 193.

231. A true and correct copy of Star Tribune article is attached as Exhibit 194.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January 27, 1999

/s/ Gregory F. Wersal
GREGORY F. WERSAL

EXHIBIT 1

GREG WERSAL'S ADDRESS TO REPUBLICAN PARTY CONVENTION DELEGATES IN 1996

Good morning ladies and gentleman, [sic] my name is Greg Wersal, and I am running for the position of Associate Justice to the Minnesota Supreme Court. At the end of this speech I will be asking for your help. Now I know that before this day is done, you will [sic] hearing that same request from numerous candidates. So I fully understand when you ask why you should support me.

The reason is that a judicial candidate may be more important than any candidate you could elect to the State Legislature. Let me give you an example. In the past, when you said you were concerned about crime, you went to your State Legislature and they passed laws to get tough on crime. But it is the Minnesota Supreme Court that determines if these laws are constitutional or unconstitutional. And when you said you were concerned about welfare and that Minnesota's welfare benefits were so high that they attract people to our state from surrounding states, you went to your State Legislature and they passed a law. And the Minnesota Supreme Court struck that law down as unconstitutional. And when you said you were concerned about abortion and you told your State Legislature that you did not want public funds being used to pay for abortions, you went to your State Legislature and they passed a law. And the Minnesota Supreme Court declared that unconstitutional.

Ladies and gentlemen, you do not need more people in the State Legislature; and, for heavens sake, you do not need more judges who try to legislate from the bench. What you need are judges who will strictly construe the Constitution. Judges who will defer to the will of the citizens of this state as expressed through their legislature. And judges who understand that the people of this state have a legitimate expectation that criminals will be punished.

Some of you ~~will~~ object to my candidacy. Some ~~will~~ even object to my very presence at this convention. But I believe I should be here today. When Abraham Lincoln spoke of a government by, of and for the people, he recognized that the legitimate power of government

comes from the people. I should be here today and so should all judicial candidates because in a democracy no one has the right or the authority to sit on the ~~Minnesota Supreme Court~~ [highest court of this state and judge you], except that you give it to them.

Some of you have said to me "Greg, the problem is we really don't know you". But ladies and gentlemen, you do know what I stand for. And you know in your hearts and in your minds that what I have told you is true.

At the end of this speech you will applaud. But I need more than your applause. I have one voice and you have many. I need you to join your voice with mine. I need you to get up out of your chairs and tell the person next to you, tell your party leaders, tell the press that are observing this convention, that today you have seen the most amazing thing. Tell them that today you saw this guy named Greg Wersal who is running for the Minnesota Supreme Court and you heard what he had to say. And despite the fact that he is an attorney, he actually made some sense.

EXHIBIT 2

[Convention Speech 1997
given to Congressional District Convention]

"The first thing we'll do is kill all the lawyers." Ladies and gentlemen, my name is Greg Wersal, I am a lawyer[,] and have been for sixteen years[,] and am a candidate for the Minnesota Supreme Court. At the risk of never leaving this convention hall alive, let me repeat that line from

one of William Shakespeare's plays, "The first thing we'll do is kill all the lawyers". That line is said by a character who is dreaming about what he will do when he becomes king. And he decides that when he becomes king, the first thing he'll do is kill all the lawyers. You see, he doesn't want to be just a king, he wants to be a tyrant. And he realizes that unless he can control the law he will never have complete political ~~control~~ [power].

Luckily, today we do not have tyrants, we live in a democracy. [Or do we?]

Is it a democracy when a single federal judge can strike down the presidential line item veto law which was recently passed by Congress? Is it a democracy when a handful of judges in Hawaii can tell 260 million Americans that they are wrong about the essential elements of a marriage? And is it a democracy when six judges on the Minnesota Supreme Court can tell you that you must spend state funds to pay for abortions despite the fact that your Legislature passed a law to the contrary?

Ladies and gentlemen you may think you live in a democracy, but you [do not] ~~don't~~. In fact, many would argue that it is our judges[,] who have [taken] ~~assumed~~ control of the law and have abandoned our Constitution[,] who have become our modern day tyrants.

If there is a solution to this problem it lies with judicial elections. The judges on the Minnesota Supreme Court do stand for election. In fact, when you next vote for a governor you will also be voting for five judges on the Minnesota Supreme Court. There are only seven judges. If you could elect five judges, think of the impact you would have.

If you want to live in a democracy then you must actively seek out and elect judges who will listen to you when you speak through your Legislature and not themselves legislate from the bench. If you want to live in a constitutional democracy, then you must actively seek out and elect judges who will strictly construe the constitution. In short, if you want to govern yourselves, if you want to be your own rulers, rather than be ruled by a group of judges, then ~~you need to~~ [the last thing you need to do is] get actively involved in judicial elections.

EXHIBIT 13

OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY
[Address And Names Omitted In Printing]

March 31, 1998

Gregory F. Wersal, Esq.
Wersal Law Office, P.A.
P.O. Box 26186
Minneapolis, MN 55426

Re: Letter of March 27, 1998

Dear Mr. Wersal:

I am in receipt of your letter dated March 27, 1998, wherein you ask for an advisory opinion as it regards certain portions of Canon 5 of the code of Judicial Conduct.

As you are well aware, there is pending litigation over the constitutionality of certain portions of Canon 5. You are a plaintiff in this action and you have sued, among others, me as Director of the Office of Lawyers Professional Responsibility and Charles Lundberg as the Chair of the Board of Lawyers Professional Responsibility. Due to this pending litigation, I will not be answering your request for an advisory opinion at this time.

Sincerely yours,

/s/ Edward J. Cleary
Edward J. Cleary
Director

jmc

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

Civ. No. 98-931 (MJD)

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

The Deposition of GREGORY F. WERSAL, taken pursuant to Notice of Taking Deposition, taken before Kerri L. Brodock, a Notary Public in and for the County of Hennepin, State of Minnesota, taken on the 25th day of January, 1999, at 525 Park Street, Suite 500, Saint Paul, Minnesota, commencing at approximately 1:00 p.m.

[2] APPEARANCES:

ERICK G. KARRDAL, ESQUIRE, of the Law Firm of TRIMBLE & ASSOCIATES, LTD., 11700 Wayzata Boulevard, Minnetonka, Minnesota 55305, appeared or and on behalf of Plaintiff, Republican Party of Minnesota.

WILLIAM F. MOHRMAN, ESQUIRE, of MOHRMAN & CO., P.A., 4100 Multifoods Tower, 35 South Sixth Street, Minneapolis, Minnesota 55402, appeared for and on behalf of Plaintiff, Gregory F. Wersal.

MARK B. LEVINGER, ESQUIRE, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, Saint Paul, Minnesota 55101-2128, appeared for and on behalf of Defendant, Verna Kelly.

THOMAS C. VASALY, ESQUIRE, Assistant Attorney General, 525 Park Street, Suite 500, Saint Paul, Minnesota 55103-2106, appeared for and on behalf of Defendants, Charles E. Lundberg and Edward J. Cleary.

*The Original is in the possession of Attorney Thomas C. Vasaly."

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[3] (At this time Wersal Deposition Exhibit Numbers 1-4 were marked for identification by the Court Reporter.)

GREGORY F. WERSAL,

the Witness in the above-entitled matter after having been first duly sworn deposes and says as follows:

CROSS-EXAMINATION

BY MR. VASALY:

Q. Mr. Wersal, would you like to state your full name and address for the record?

A. It's Gregory F. Wersal, W-E-R-S-A-L. You want my home address?

Q. Whatever you prefer.

A. I would actually prefer my office address if that's okay. It's 7841 Wayzata Boulevard, Suite 201, P.O. Box 26186, Saint Louis Park, Minnesota 55426.

Q. Mr. Wersal, are you in practice by yourself or do you have partners?

A. I practice with my brother Mark Wersal.

Q. Are there any other attorneys that are associated or Of Counsel with the firm?

A. No.

[4] Q. Well, let's go through these exhibits first of all. Do you have Exhibit 1 before you, Mr. Wersal? It's

identified as Deposition Exhibit 1 and at the top it states Gregory Wersal's Campaign For Justice, Judicial Elections, The Only Means To Judicial Accountability. Mr. Wersal, can you identify that flier?

A. Just give me a second.

Q. Sure.

A. I think I can, yes.

Q. What is it?

A. It appears to be a copy of a flier that was used during my campaign and I'm trying to remember what year. I'm not sure if it was used in the '98 campaign, it might have only been used in '97 or prior. I'm not sure.

MR. MOHRMAN: You mean '97 or '96?

A. Well, or prior. It may have been '97. To be honest with you, I can't remember exactly, but it was used at some point in time. And I do want to qualify one thing and I know I'm not sure where you got these from and my concern is that literally every piece that my campaign sent out of any material sometimes went through several drafts or versions which were then submitted not only to my eyes but the eyes of maybe two, three, four other attorneys and then changes would have been made and my only concern would be that this appears to be what we sent out, but without [5] comparing it to the original, I don't – I'm willing to accept responsibility for the exact words I used, but because of the ethical questions that are going to be involved in much of your questions and much of what I did. I am concerned about whether or not this is the exact same words, okay?

BY MR. VASALY:

Q. All right. Well, I'll tell you where I got it. It doesn't appear in the record anywhere but it was mailed to me by a person who stated that he received the fliers at the Republican convention and at the Republican district convention this year. I have no firsthand knowledge myself as to whether those representations are true. The original documents that I received are before the Court Reporter and marked as Exhibits 1, 2 and 3 and Exhibit 4, as I understand it, is taken from the appendix to one of the Plaintiff's briefs when this was on appeal.

MR. MOHRMAN: Actually, Greg, why don't you look at the originals as opposed to –

THE WITNESS: Oh, we have originals.

MR. MOHRMAN: Mr. Vasaly, was this – the person you received this from, did they file an ethical complaint against Mr. Wersal?

MR. VASALY: I have no knowledge of that and I wouldn't have knowledge of that.

[6] MR. MOHRMAN: Why would you not have knowledge of that?

MR. VASALY: I represent the Lawyers Board as their attorney in this litigation, I'm not a staff attorney in their office and I'm not familiar with their workings. If a complaint was filed against Mr. Wersal, Mr. Wersal would be notified, not me.

MR. MOHRMAN: I thought you represented that you were not going to produce any ethical files in conjunction with discovery in this case and what I'm

inquiring into is if there is an open ethics investigation against Mr. Wersal and this document has been obtained from it, I think you've waived your objection to that and I want to see the rest of the documents.

MR. VASALY: Well, first of all, it hasn't, and secondly, it would be Mr. Wersal who would have access to that file –

MR. MOHRMAN: I understand.

MR. VASALY: – not me, so Mr. Wersal is the one person who would know if a complaint had been filed against him. He would know if there is an open file concerning him at the Lawyers Board, I don't.

MR. MOHRMAN: Actually, that's not true. My understanding, the Lawyers Board will open up investigations and then make a decision whether they're [7] going to move forward or not move forward before they notify somebody that there has been an investigation open and so that's why I asked, and as I said earlier. I'm just trying to be real clear of the position of the Lawyers Board and I believe the Judicial Board and if they're going to open up ethic files and you start to produce documents from ethics files, then I think you open a door.

MR. VASALY: Let me be clear. It doesn't come from any ethics file, and no, it is not correct. The Lawyers Board does not investigate attorneys without notifying them, that's not correct. They do when a complaint is received and they determine to dismiss it without investigation, they notify the complainant and respondent simultaneously and there will be an interim of time while the documents are being prepared.

MR. MOHRMAN: That's what I'm referring to.

MR. VASALY: There is an interval to draft documents and sign them and mail them and during that period of time, the respondent and complainant would not know, but it's not a case of me being privy to an investigation Mr. Wersal would not be privy to.

MR. MOHRMAN: Let me be clear about what I said. My understanding is there is an interval of time from when the complainant filed the complaint, it's Mr. Wersal [8] who wouldn't know about it and I do not know what that length of time is, but my understanding is it's longer than a few days and maybe even longer than a few months, so that's why I asked the question about whether or not these materials have been received from ethics investigations and I don't know that period of time but I know there is a period of time and I want to make sure that if you're going to start to produce stuff from the ethics investigation files, we want to see them.

MR. VASALY: I guess we can talk about it more later, but I'm just going to try to be clear. No, the complainant would not be informed of an investigation before the respondent would be informed of an investigation. The complainant and respondent are informed simultaneously, there would be no investigation prior to a summary dismissal.

MR. MOHRMAN: The complainant would know that they filed a complaint.

MR. VASALY: Yes, but they wouldn't know whether an investigation was taking place.

MR. MOHRMAN: And the respondent wouldn't know.

MR. KAARDAL: I have an easy question. The Minnesota Lawyers Professional Responsibility Board or the Office of Lawyers Professional Responsibility, if they [9] have information about ethical conduct, can the office itself initiate a complaint?

MR. VASALY: Yes, like, in fact, I think that's universally with licensing boards that any person can file a complaint including a member of the staff or member of the Board. The Lawyers Board has permitted under the rules to conduct his or her own investigation.

MR. KAARDAL: For the basis of an ethical complaint against Greg Wersal?

MR. VASALY: No.

MR. KAARDAL: No further questions. Thanks.

BY MR. VASALY:

Q. Mr. Wersal, turning to Deposition Exhibit 1, is there anything – I'm not sure whether we completed this or not. Is there anything further you want to add from anything you've already stated?

MR. MOHRMAN: Well, objection, vagueness. What do you mean by identify, identify how?

BY MR. VASALY:

Q. Mr. Wersal, are you able to answer the question?

MR. MOHRMAN: Do you understand my objection? I mean, identify in terms of time, who was the source of this, that sort of thing?

[10] A. I do note the following: On the back of the document it refers to my wife and I having been married for 12 years and we've now been married 15. And I also remember this language and it was used I'm quite certain in '96.

BY MR. VASALY:

Q. Okay. Now, Mr. Wersal, turning to the text of Exhibit 1, is there anything in there which, in your opinion, would constitute a violation of the judicial canon as presently worded?

MR. MOHRMAN: Objection, calls for a legal conclusion from Mr. Wersal.

MR. KAARDAL: Same objection.

MR. MOHRMAN: Answer it if you can.

A. Absolutely not.

BY MR. VASALY:

Q. And did the existence of the canon prevent you or limit you in your promulgation of the flier that's before us as Exhibit 1?

A. Absolutely.

Q. How did it do that?

A. Because in the flier I was not able to state in detail my opinion about the various cases that are described in the flier.

Q. It's the amount of detail that limited you?

A. It is my – yes, absolutely. It is my feeling [11] that my ability to discuss legal cases under the rules other

than perhaps to state the facts and the existence of the case and what the Court held or a dissent held is very limited so that – because right now the rules say I am not to announce my views on legal and political issues so it becomes very, very difficult not to discuss cases.

Q. Was it the purpose of the flier to indicate your disagreement with the three decisions that are alluded to on crime, welfare and abortion?

A. It was my purpose to do two things I think. First was to tell people that they have a legal right to elect judges and that they should exercise that right and that judges are out there making decisions that may concern them or may not concern them, but that their only ability to have an impact is through an election process. To be frank, I tried desperately not to state my opinion in anything we handed out about cases and the decisions in cases.

Q. Was it your intent in the flier to indicate disagreement with the three Supreme Court decisions that are alluded to in the flier on crime, welfare and abortion?

A. It was – no, that wasn't my intent.

Q. Okay. It was intended to be a neutral statement of the Court's opinion on those three cases?

A. Again, I don't think it indicates anywhere my opinion about those cases. It gives sometimes a statement [12] from a dissenting judge and I want you to understand that my concern with many cases is not the holding of the case, it was the process at which the decision was arrived at.

Q. Do you believe that the three cases that are listed there could be characterized as decisions which are marked by the disregard for the legislature and lack of common sense?

A. Are you asking for my personal opinion or are you asking whether people could reasonably believe that?

Q. I am asking whether that was the purpose of the flier, to indicate that the three decisions that are listed there are examples of decisions that are marked by disregard for the legislature and lack of common sense, but I would be happy to ask the other question. Maybe it's just me, but I read this and I assumed you had an unflattering opinion of these three. Was that just me or was that intentional?

A. Again, my concern – I'll just try to stress it again. My concern is not necessarily with the outcome, it's with how it's arrived at in the process and a correct reflexion [sic] between what role the legislature should play in a constitutional government and what role the Court should play in a constitutional government.

Q. Is the flier critical of the three decisions that are referred to?

MR. MOHRMAN: I'll note an objection to [13] that. The flier speaks for itself.

BY MR. VASALY:

Q. Mr. Wersal?

MR. MOHRMAN: Do you understand his question? I don't know how he can answer that question, Tom. If you want to rephrase the question, go ahead.

BY MR. VASALY:

Q. Mr. Wersal?

A. What's the question?

MR. MOHRMAN: Why don't you read the question back, and before you do, I want to note my objection is he's asking is the flier critical and my objection is the flier speaks for itself, so I think, Tom, if you want to ask him what his opinion was or his intent was, that's a different matter.

(Whereupon the requested portion of the record was read by the Court Reporter.)

A. I think the statements given there are simply statements of fact about what the Court did. The fact that somebody might look at them and say they're critical is because they, as many people might, disagree with the decision the Supreme Court made.

BY MR. VASALY:

Q. Would you say the flier is critical of the three decisions that are alluded to?

[14] A. My personal opinion of those decisions?

Q. No, of the flier.

A. I think I just answered that which is I think the flier simply sets out facts.

Q. So is that a no?

MR. MOHRMAN: Counsel, asked and answered.

BY MR. VASALY:

Q. Is the answer to the last question a no?

MR. MOHRMAN: Counsel, asked and answered.

MR. VASALY: I haven't heard a response.

MR. MOHRMAN: No, no, wait a minute.

MR. VASALY: Are you instructing him not to answer?

MR. MOHRMAN: No, I'm asking you to ask another question. You're trying to badger him to give an answer to the question that you want to hear. This is a deposition and you get to ask questions and he gets to answer. If you don't like his answers, that's fine, you can make a motion before the Court, but I'm not going to have you lean forward and give kind of sarcastic responses to my client in an attempt to badger.

MR. VASALY: I wasn't leaning forward.

BY MR. VASALY:

Q. My question is: Was that a no?

[15] MR. MOHRMAN: Counsel, please don't interrupt me, it's rude to the Court Reporter and it's not part of the process here and I will do my best to give you the same courtesy. Earlier in this deposition today you kind of looked at my client and said, "Well, maybe it's just me," and stuff, okay? That was sarcastic and I didn't comment on it at the time because I didn't want to start this kind of going back and forth. You asked is the answer to the question no, he answered your question. If

you want to rephrase the question and ask it differently, that's fine.

BY MR. VASALY:

Q. Mr. Wersal, is it correct that your answer to the question is this flier critical of the three decisions no?

A. I don't think there is enough information here to tell necessarily whether it's critical or not critical. I think – and that was part of the problem which is that other than giving a rendition of facts, which I think is what happened here with these cases, that a candidate such as myself is unable to discuss in any detail their criticism of cases.

Q. So you're not able to answer yes or no of whether the flier is critical of the decisions?

A. Again, I think that the three decisions that [16] are discussed we discussed simply as statement of facts about what the Supreme Court ruled.

Q. Do you believe it's neutral in content?

A. Is it neutral?

MR. MOHRMAN: Which content are you referring to, Counsel, the entire flier or the three references that are made to crime, welfare and abortion?

MR. VASALY: Let's see if Mr. Wersal can answer it as phrased.

MR. MOHRMAN: Read the question back, ma'am.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Objection, vague. Do you understand the question, Greg? Mr. Vasaly has asked you a question that, in my opinion, is vague, it's unclear whether he's asking you whether the whole flier is neutral in its content regarding criticism or whether it's referring to those three decisions and you certainly are free to ask Mr. Vasaly to rephrase the question.

MR. KAARDAL: Same objection, and I would also like to note that one could – just same objection.

MR. MOHRMAN: What's that?

MR. KAARDAL: I just want to assist. One of the problems with the questions about the whole flier is [17] that it obviously isn't neutral in some senses and in parts of it may be non-neutral and other parts might be neutral and it might help to move into and identify particular sentences.

BY MR. VASALY:

Q. Mr. Wersal, are you able to answer the question?

A. If you could specify which part of the exhibit, I will do my best to answer.

Q. Was it a neutral description – was the flier intended to be a neutral description of the three cases that you refer to?

MR. KAARDAL: I have to object to vagueness. You could disagree with the – there are two possible things he could concur with, the result and then the procedure. That's the end of my objection.

MR. MOHRMAN: Could you read the question back again.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Again, I would object on vagueness grounds. I mean, clearly the flier itself was intended to get elected, so in that sense it wasn't neutral and I wish, Tom, I'm kind of begging you here to sharpen your questions.

[18] BY MR. VASALY:

Q. Mr. Wersal?

MR. MOHRMAN: If you can answer, Greg.

A. Well –

MR. MOHRMAN: Let me tell you as your lawyer, this isn't a history exam, you don't have to answer questions if you don't understand them. You are more than entitled to ask Mr. Vasaly, tell him why you don't understand his questions and if he sits there and continues to look at you and say I expect an answer, you can say "Hey, look, I don't understand your question."

A. Well, again, I think the document speaks for itself. I think some people are going to look at this and I think the part that deals with the cases is a factual rendition of what occurred in those cases. Some people may agree with that outcome, some people may disagree. Some people may agree with the process that was used to arrive at those decisions, some might disagree.

BY MR. VASALY:

Q. Perhaps it would be a little more efficient at this point to answer the questions yes, no, or you can't

answer to close the line of questioning. If you can't answer, say so.

MR. MOHRMAN: He has answered and you don't like his answer and we've asked you to rephrase the [19] questions to focus in on particular parts of the flier and you've refused to do it.

MR. VASALY: Perhaps Mr. Wersal could repeat the answer.

BY MR. VASALY:

Q. Did you intend it to – was the flier intended to be a neutral description of the three cases that are alluded to in Exhibit 1?

MR. MOHRMAN: Objection, asked and answered, vague.

MR. KAARDAL: Same objection on vagueness. I'm concerned about the issue again about procedure and the decision itself. With the result of the Court's decision and the procedure and the threat today of an ethical violation being filed by the Office of Lawyers Professional Responsibility Board and the Lawyers Professional Responsibility Board, an answer here could be misconstrued against Mr. Wersal's interest and my client's as well. End of objection.

BY MR. VASALY:

Q. Mr. Wersal?

MR. MOHRMAN: If you don't understand the question, you can keep telling him you don't understand.

A. I don't understand your question.

BY MR. VASALY:

[20] Q. Okay, you don't understand the question?

A. Right, I'm sorry. Especially, I'm sitting here going – with the objections, I guess I don't understand, I'm sorry. I mean, let's face it, the flier was meant to appeal to some people, right.

Q. Okay.

A. It was going to turn other people off, so . . .

Q. Was it meant to appeal to people who might not like the decisions that you refer to?

MR. MOHRMAN: You're asking him what his intention was in issuing – well, you haven't even asked him yet whether he drafted the flier, so . . .

A. I'm sorry, what's your question, sir?

MR. VASALY: Can we have it back.

(Whereupon the requested portion of the record was read by the Court Reporter.)

A. Sure, a campaign flier is meant to appeal to people.

BY MR. VASALY:

Q. Now, if there had been no restrictions of Canon 5 governing the flier, what else would you have said in there about those decisions?

A. I probably would have said what I thought about those cases.

Q. Specifically?

[21] MR. MOHRMAN: Is that a question, Counsel, a one-word question?

BY MR. VASALY:

Q. Specifically what did you think about those three cases that you wanted to include in the flier?

MR. MOHRMAN: Objection. Greg, first of all, if you remember the cases, you can answer. And secondly, if you think you can answer here today as to what you thought about those cases, if you can, go ahead and answer.

A. Well, I don't have the cases in front of me, but I know that one of my primary concerns about most of these cases was the process by which they were decided.

BY MR. VASALY:

Q. And did Canon 5 limit you in expressing your disagreement with the process when you were promulgating Exhibit 1?

A. Absolutely.

Q. But for Canon 5, you would have expressed disagreement with the process with respect to those three cases?

A. Yeah.

Q. All right. In addition to the process, is there anything else that you would have added to the flier but for Canon 5?

[22] MR. MOHRMAN: Can you ask the question back again?

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Tom, here is my objection to that question, it's directed at the flier. Now, perhaps if you want to rephrase it in terms of but for Canon 5, is there anything else that you would have wanted to tell the voters in Minnesota regarding the issues in these cases. I mean, tied to the flier, you don't know if you can put it in a flier or a different flier or that sort of thing.

MR. VASALY: Well, I'll stick with the question as worded for now.

MR. MOHRMAN: You can answer the question, Greg.

A. Well, the question is very general and there were probably many things that I would have wanted to add, one being that the flier is not from me, it's from my campaign committee and it probably would have been more powerful if I had been able to ask people to work on my campaign or to contribute money as opposed to a piece coming from my campaign committee. In fact, you know, most political literature you're going to see, the candidate signs it, not the campaign committee.

BY MR. VASALY:

[23] Q. Did you approve Exhibit 1 before it was publicized?

MR. MOHRMAN: Objection. Greg, be very, very careful how you answer this question because I recall I may have even seen this piece of literature in the '98 campaign cycle at a Republican function, so when he asks you this, I'm really concerned with Mr. Vasaly's use

of verbs here and I hope it's not deliberate. When you say publicized, you make sure you did because once you release Exhibit 1 in what you believe to be 1996, you don't have any say if some other goofball gets ahold of it and starts making copies of this thing and distributes it two years later.

MR. KAARDAL: I also object on the grounds of vagueness on behalf of all the members of the Republican Party including my client, Mark Wersal and Crow and Holbert, vagueness.

A. Mr. Vasaly, could you try to be more specific?

BY MR. VASALY:

Q. Now, Mr. Wersal, you believe that this was publicized for the first time in 1996?

A. That's correct.

Q. And before it was publicized, did you approve it?

A. After consulting with probably two or three [24] other attorneys, yes.

Q. You approved it?

A. Yes.

Q. Okay. Did you approve its distribution in 1998?

A. Not that I know of.

Q. Do you have an explanation for the possibility that it could be distributed in 1998 without your approval?

A. Well, in 1996 I maybe handed out – I don't know. I have no idea how many of these might have been handed out, it might have been 10 and it might have been 5,000, and so a lot of people had my literature in their hands after the stuff was handed out in '96.

Q. As you sit here today, do you have any knowledge that any persons were distributing literature on your behalf that you had not approved for distribution in 1998?

MR. MOHRMAN: Could you read the question back.

(Whereupon the requested portion of the record was read by the Court reporter.)

MR. MOHRMAN: Counsel, I would ask you to rephrase that question, that question is extremely vague. It's vague in terms of the time and what time in 1998.

BY MR. VASALY:

[25] Q. Mr. Wersal, are you able to answer?

MR. MOHRMAN: I'm instructing you not to answer that question.

BY MR. VASALY:

Q. Mr. Wersal, do you have any knowledge of anybody at any time distributing literature on your behalf without your approval?

MR. KAARDAL: I object on grounds of vagueness with respect to time again.

MR. MOHRMAN: I think you can answer that question. He's asking you if there has been ever any time

that you're aware of any person distributing something without your approval.

A. Yes, I am.

BY MR. VASALY:

Q. Please describe that.

A. Some literature I know was distributed at – by who, I don't know – at some conventions in 1998 and came to my attention when – I'm trying to remember how it came to my attention. I mean, again, I just heard that pieces were distributed from other people.

Q. Let's turn to Exhibit 2. Mr. Wersal, can you identify Exhibit 2?

A. Yes, I can.

Q. What is it?

[26] A. It's a flier which was mailed out by my campaign in 1998.

Q. Did you approve it?

A. After consulting with probably one, two or more other attorneys, yes.

Q. Let's turn to Exhibit 3. First of all – I'll ask you a compound question. First of all, can you identify it, and secondly, is it complete?

MR. MOHRMAN: Answer the questions one at a time.

A. Just give me a second here. It appears to be a photocopy of a piece of literature which was mailed out

and without trying to do some checking, I'm not sure of the year, and it is not complete, there should have been a second page to it.

BY MR. VASALY:

Q. Would it have been mailed out either in 1996 or 1998?

MR. MOHRMAN: If you know.

A. As I sit here, I'm not sure, and you left out the year 1997, because again, I was mailing things out all three of those years or handing things out.

BY MR. VASALY:

Q. Now, with the understanding that you believe or there is a possibility that the Exhibit 3 is not complete, [27] so we're only focusing on a one-page document –

MR. MOHRMAN: Did you say there is a possibility that it is incomplete or that it is incomplete?

THE WITNESS: Assuming this is a photocopy of what I sent out, it is incomplete. There is a second page that's missing.

BY MR. VASALY:

Q. Well, let me rephrase that. Understanding your testimony that Exhibit 3 is not complete, focusing only on the one page that's before us of Exhibit 3, what was your intent in addressing the three decisions that are alluded to on Exhibit 3?

A. Well, my intent was to encourage people to vote for Greg Wersal.

Q. Was it your intent to indicate that you had a negative opinion of the three decisions that are referred to on Exhibit 3?

MR. MOHRMAN: You're asking him whether he said that or whether it was his intent, because I think the decisions are just quotes from the cases, Counsel?

BY MR. VASALY:

Q. Mr. Wersal?

A. I'm sorry, what was the question again, Mr. Vasaly?

(Whereupon the requested portion of the record [28] was read by the Court Reporter.)

A. To be quite honest, I think the answer to that is no, because what I tried again to do is set out the cases and the facts and people are going to decide for themselves after they read them whether they agree or disagree with either the decision or the way in which it was arrived at.

BY MR. VASALY:

Q. Turning to Exhibit 4, Mr. Wersal, can you identify Exhibit 4?

A. Yes. Again, it appears to be a photocopy of a piece of literature which was prepared for my campaign.

Q. In what year?

A. I knew you were going to ask that. As I sit here again today, I'm not sure without checking what records I've got and seeing if it would help me determine exactly when.

Q. Did you approve Exhibit 4 before it was made public?

MR. MOHRMAN: If you recall and if you recall whether it was made public or not. Object to the question, assumes facts not in evidence.

A. To be honest with you, I'm not sure whether this piece was sent out.

MR. MOHRMAN: The piece has bate stamp numbers at the bottom of it which assumes that these [29] materials would have been submitted in the Court by the Republican Party or us.

MR. LEVINGER: I can tell you where it came from. It's Tab X in the separate appendix of the Appellant's appeal to the Eighth Circuit.

MR. KAARDAL: And I think I can add that it was attached to your affidavit.

MR. MOHRMAN: Yes, and that's meaningless as to whether or not that went out. If you can recall whether it went out as you're testifying. If they want to show you your affidavit or where it comes from in the Court opinion, they can do that, too.

A. To be real honest with you, I can't remember when or if this piece was sent out. It may have been, it may not have been.

BY MR. VASALY:

Q. Can you recall whether at any time you approved Exhibit 4?

MR. MOHRMAN: Well, objection, Counsel. What do you mean by approve? And the reason I ask you that, Counsel, is I'm assuming that if Mr. Wersal had testified that this document Exhibit 4 went out from his campaign, then it's a legitimate question to ask him, but he just testified he doesn't know whether or not this document went out from his campaign or not, to the facts in evidence right [30] now is he doesn't remember whether this went out, so what do you mean by approve? Do you see what I'm getting at, Greg?

THE WITNESS: Yes.

BY MR. VASALY:

Q. Mr. Wersal, are you able to answer the question?

A. Again, without – you need to understand that –

MR. MOHRMAN: Do you understand, he's asking whether you approved this.

TH WITNESS: I don't think I can answer that.

BY MR. VASALY:

Q. Fine.

A. If I knew for a fact that we had sent it.

MR. MOHRMAN: Wait a minute.

THE WITNESS: But I don't.

MR. MOHRMAN: Well, let him know why. I think it's again what do you mean by approve?

A. Well, that's what I was trying to get at. If, in fact, we sent it out, then I probably approved it, but my

concern right now is I can't remember – I remember this piece being generated, okay? I don't remember that we sent it out. In other words, as I explained to you earlier, we would go through sometimes two, three, five, ten drafts of a [31] flier and to be honest with you, I'm not certain this one was sent out.

BY MR. VASALY:

Q. Mr. Wersal, have you or did you become more circumspect in what you felt free to state in your 1998 campaign as opposed to your 1996 campaign?

MR. MOHRMAN: As a result of Canon 5, Counsel? Again, object, vagueness.

MR. KAARDAL: Same objection.

A. I think the answer to that is yes because at one time the Lawyers Board of Professional Responsibility in a decision indicated to me that using their prosecutorial discretion, they were not going to prosecute me on ethical grounds based on the announce clause. There were two problems with that. The first is that that was their prosecutorial discretion and it was my fear they could change that discretion at any time and then suddenly I would be subject to a complaint.

The second was that the original complaint was never appealed so one of my fears was that I could face an appeal. An appeal could eventually end up in front of the Minnesota Supreme Court and when the Minnesota Supreme Court made the decision they made to change the rules on January 1 of 1998, it became very obvious to me that they were hostile or that I was – to candidates' First Amendment rights and [32] that I had to be far more

circumspect in what I said or didn't say in 1998 as opposed to what I think I did in 1996 or even '97.

BY MR. VASALY:

Q. So it's your belief that a person who complains to the Lawyers Board could appeal the dismissal ultimately to the Minnesota Supreme Court?

MR. MOHRMAN: Could you read that back.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Mischaracterizes his testimony. Go ahead and answer it, if you can.

A. Well, it's my understanding they don't issue a dismissal, they issue a determination that – what's the word – a determination that discipline is not warranted which can then be appealed to a Board member. That Board member's decision can then be appealed and eventually you can end up in front of the Minnesota Supreme Court.

BY MR. VASALY:

Q. Now, did the Lawyers Board ever give you any information that a party could appeal such a determination to the Minnesota Supreme Court?

MR. MOHRMAN: If you recall.

A. Did the Lawyers Board, is that what you're asking me?

[33] BY MR. VASALY:

Q. Correct.

MR. MOHRMAN: If you recall. My understanding is they issued a letter to you that Mr. Vasaly should have in his possession or his client does, so unless you recall everything that letter says, I would be careful about how you testify.

A. Well, it's not my understanding of what they say or didn't say but the understanding of what the ethics process is.

BY MR. VASALY:

Q. And what is your understanding based on?

A. What is it based on? Discussions with lawyers who practice in the area of lawyer ethics.

Q. So you were given information by lawyers who practice in the area of lawyers ethics that a person who files a complaint with the Lawyers Board would have a right of appeal of a determination that discipline is not warranted to the Minnesota Supreme Court?

A. No, I never said that.

Q. Please clarify.

A. I said they have a right to appeal to a panel member, that's spelled out right in the determination that discipline isn't warranted. The question then becomes whether depending on which way the panel member rules, [34] whether you will have a full hearing and then there is the possibility of an appeal beyond that to the Minnesota Supreme Court.

Q. And your belief that there is a possibility of an appeal beyond that to the Minnesota Supreme Court is based upon discussions you've had with lawyers who practice in the area of lawyers ethics; is that correct?

A. Yes.

Q. Is it based upon anything else?

A. Yes.

Q. What else?

A. My experience.

Q. Could you be more specific?

A. I had an ethics case that went to the Minnesota Supreme Court previously.

Q. What case was that?

A. You mean the title of the case?

Q. Okay.

A. I can't remember.

Q. Can you remember anything at all about it?

A. Yes.

Q. What can you remember about it?

A. Mr. Vasaly, here is the problem I've got, ethical complaints by your Board are supposed to be confidential matters, your Board cannot make them into [35] public matters. You're questioning me about these it seems to me is a violation of your Board's own rules and I don't think it's relevant except to say that it happened and that

I had the experience. If a judge tells me I have to lay out for you a confidential matter, I will do it, but beyond that, I'm not going to answer that question.

Q. I respect that, Mr. Wersal, and I don't want to pursue the inquiry further if it makes you feel uncomfortable. It's not a case of me having information that I was trying to get you to disclose publicly, I did not know. Now, do you feel comfortable in discussing simply the procedure of that matter without discussing the substance of it, and specifically the procedure of whether there was an appeal to the Minnesota Supreme Court?

MR. MOHRMAN: Don't answer that question. What's the relevance of this, Tom? Mr. Vasaly, would you please explain the relevance of this line of questioning and if you do not, I'm going to start instructing him not to answer. You have an obligation as an attorney before we take up discovery issues with Judge Davis to try to resolve them here. I am asking you what the relevance of this is. You're starting to get into personal matters regarding confidential issues with the Ethics Board and I don't see any relevance to that at all, and if you're doing this to embarrass my client or anything like that, I've got real [36] problems with it. So I'm going to ask you again, Counsel, will you tell me the relevance of this in order that I may have the opportunity to decide in conjunction with my client whether he should answer these questions or not?

MR. VASALY: I think I'll just let the question stand.

MR. MOHRMAN: So you're refusing my request to conduct a discovery conference on this issue?

MR. VASALY: I don't want to discuss a discovery conference right now.

MR. MOHRMAN: Then I'm instructing him not to answer the questions.

MR. KAARDAL: I have the same objection.

BY MR. VASALY:

Q. Now, Mr. Wersal, prior to the complaint that was filed against you in – was it 1996, do I have the date right?

A. There was a complaint filed against me in 1996, yes.

Q. Prior to your receipt of the determination of the resolution of the 1996 complaint, did you have a concern about the applicability of Canon 5 to your campaign practices?

A. Absolutely.

Q. You were aware of Canon 5 before you received [37] the 1996 Lawyers Board determination?

A. Absolutely.

Q. And were you concerned about the possibility that a complaint would be filed against you based on Canon 5?

A. Absolutely.

Q. And after receiving the determination from the Lawyers Board in 1996, did you become more concerned or less concerned about the possibility that you could be disciplined for a violation of Canon 5?

A. More concerned.

Q. Why did you become more concerned?

A. Because of the two items I just explained which were that it's a statement of prosecutorial discretion and my fear that that could be changed without notice to me and that I could then be prosecuted. And the second was that that decision was not appealed and I had been – I was afraid that an appeal could occur and I had been trying desperately through consultations with other lawyers, et cetera, to try to construct my speech that I gave, my activities, the literature that was handed out to comport with Canon 5 and yet I was having ethical complaints raised which meant that other complaints would most likely occur and then the question is how much do you want to risk your license and how much money do you want to spend defending [38] it?

Q. Before you received the determination in 1996 from the Lawyers Board, did you understand that a dissatisfied complainant could appeal to the Lawyers Board?

MR. MOHRMAN: Don't answer that. Counsel, could you explain what the relevance of this line of questioning is?

MR. VASALY: I'm sorry, Mr. Mohrman, I don't want to take the time doing it. I guess I'm concerned about the amount of time that's being taken and if you want to instruct your client to answer or advise your client however you want, but I don't want to get into me explaining the relevance.

MR. MOHRMAN: Counsel, I've only asked you to do that once before. I want to be clear. I think you

asked that question at least twice before and it's been answered previously and you seem to keep harping on this topic. Counsel, if you're going to force a response to this, that means we're going to have to go through a Rule 7.1 motion before the Court which will take a tremendous amount of time and effort and scheduling of discovery and the like, and actually before we can even submit that motion to the Court, we have to conduct a discovery conference and I'm not going to have Judge Davis rule on that and the most expeditious way to do that is to have it right now, so what [39] I'm asking you is tell me the relevance of this line of questioning so I can advise Mr. Wersal, yeah. I think you need to answer because here is how it bears in the lawsuit, but for some reason you're just refusing to do that and I can't understand that at all.

MR. VASALY: Well, the reason I gave is the reason that I have.

MR. MOHRMAN: And the reason is what?

MR. VASALY: The amount of time.

MR. MOHRMAN: Well, it would take you about 15 seconds.

MR. VASALY: It won't be the first or the last I'm worried.

MR. MOHRMAN: I only instructed him to not answer a question and we've been in this deposition for an hour and 15 minutes. And I don't know why you got into some sensitive Ethics Board matter which raised a whole host of issues here at the deposition and I'm not

sure whether my client should be answering those questions or whether he can and I want to know the relevance and you refuse.

MR. VASALY: You don't understand the relevance of his concern that a complaint would be filed against him and that that in turn, according to him, affected his 1996 campaign?

MR. MOHRMAN: Counsel, I don't think I've [40] objected to those questions because that's certainly one of the arguments we're making in this case. What I have objected to is all these questions regarding procedures and Supreme Court and references to other issues with the Ethics Board.

MR. VASALY: Well, it's now 2:20 and I prefer to – I have a meeting at 5:00 p.m. and I do not want to have to adjourn the deposition to another day. If we have to, we'll have to, but . . .

MR. MOHRMAN: We're not going to adjourn to another day, I can tell you that right now.

MR. VASALY: So I would like to get one response to the last question I asked and I'm not sure if the Court Reporter can find it, but if she can, I would ask her to repeat it and let's just get an answer on the record and move on.

MR. MOHRMAN: Why don't I just leave then. Counsel, I asked you to tell me what the relevance of the question was and I instructed my client not to answer and I'm sure you would love it if we can move on, but that's not my real purpose here today.

MR. VASALY: So you're instructing him not to answer?

MR. MOHRMAN: Well, I'm wondering what the relevance is because we're getting far afield.

[41] MR. VASALY: I decline to go into what my –

MR. MOHRMAN: You're refusing to conduct a discovery conference with me under the rules.

MR. VASALY: I already stated my position.

MR. MOHRMAN: We could get a federal rule book and take a look at what the rules require.

MR. VASALY: At this point there is a question on the table.

MR. MOHRMAN: I doubt he remembers it.

MR. KAARDAL: Can we take a short break, I have a necessity.

(At this time a brief recess was taken.)

MR. MOHRMAN: Back on the record. Based on our discussions off the record, Mr. Vasalay, and discussions that I had with my client, you can go ahead and ask Mr. Wersal his understanding of the ethics process.

MR. VASALY: Okay.

BY MR. VASALY:

Q. Mr. Wersal, did your understanding of the ethics process change as a result of your receipt of the Lawyers Board determination in 1996?

A. My understanding of the process, no.

Q. Prior to your receipt of the 1996 [42] determination, you understood that a complainant could appeal a determination that discipline is not warranted to a member of the Lawyers Board, correct?

A. Yes.

Q. And you had the same understanding afterwards?

A. Yes.

Q. Is there anything about that subject, complainant appeal rights, that changed or was affected in your mind after getting the 1996 Lawyers Board determination?

A. Again, I think there are several things that changed. The first is I had people stand up at conventions and say that they were going to file ethical complaints against me after that decision for conducting the same conduct that the Board or that in their prosecutorial discussion said they weren't going to do anything with or perhaps the complainant would say something else yet. The Minnesota Supreme Court started changing the rules on the – that took effect January 1st of '98. Those changes, the fact that I have people out there complaining tells me that I have to be very circumspect or I'm going to end up in a position where I don't want to be. I wanted to run for an office, I didn't want to create an ethics violation. I was trying to do the best I could to run for a political office, a public office without crossing the line.

[43] MR. MOHRMAN: The line being the Canon 5?

THE WITNESS: The Canon 5.

BY MR. VASALY:

Q. Mr. Wersal, as we all know, there are various parts of Canon 5 and let's just focus on one part of it, the provision that prohibits a candidate from announcing his or her view on disputed legal or political issues.

MR. MOHRMAN: For purposes of the deposition, we'll just refer to that as the announce clause.

MR. VASALY: That's fine.

A. Okay, that would probably be preferable.

BY MR. VASALY:

Q. Now, what can the Lawyers Board do – what can it do – what could it do to make you comfortable that you would be free from prosecution for violating the announce clause?

A. I'm not sure everything their office could do or not do, but they could start that they're saying this is constitutional or unconstitutional and give candidates a – some kind of a bright line. I shouldn't have to be subject to the whims of somebody based off their prosecutorial discretion. You're talking to run for a public office and it seems to me that you can't have a candidate run for an office when they don't know what they are able to say or not say. We're depriving the public their First Amendment [44] rights in the election process because it's too vague, there is no bright line.

Q. Well, let's take my clients one at a time. You've sued the Director of the Lawyers Board and the Chair. What is it the Director should do in your view right now to make you feel comfortable or sufficiently free from

prosecution so you don't feel threatened by him; what is it that he has to do?

A. The last time –

MR. MOHRMAN: A, it's speculative, and B, if there is anything that can be done. I mean, essentially what Mr. Vasaly is asking you is if you put this more in a legislative context and with the legislature, he's asking you what a prosecutor could do to make you feel comfortable about a legislator's conduct and I don't know if there is an answer to that.

A. Well, let me put it to you this way: It is not to go into a Court appearance and say we aren't going to prosecute this right now until it's determined whether it's constitutional or unconstitutional. I can tell you that's not what I want. What they can do, I don't know entirely, I'm not entirely knowledgeable about what their powers are or are not, but I can tell you when they go into Court and tell a judge that they're not going to prosecute it right now until it's determined – I think I've just been told, [45] "Mr. Wersal, if you've stepped over the line in the past and this is appealed that it's constitutional, we're coming after you," I think that's the message that was sent to me.

BY MR. VASALY:

Q. At any time have you asked the Chair or the Director of the Lawyers Board to take any action with respect to the announce clause?

MR. MOHRMAN: Other than by filing this lawsuit, Counsel?

A. The answer to your question, one thing we did, yes, was file the lawsuit, but in addition we sent several

letters to the Director's office asking for advisory opinions.

BY MR. VASALY:

Q. And one of them – one of the subjects of your letter was the announce clause?

MR. MOHRMAN: If you recall, this isn't a history exam. He's got copies of those letters and if he doesn't have those letters here at the depo, don't get at what the content was.

A. Without looking at the actual letters, I would want to review the letters.

BY MR. VASALY:

Q. Now, in 1996 following the Lawyers Board determination, some people threatened to file ethics [46] complaints against you; is that correct?

A. Yes.

Q. At what point in time did you decide to become a candidate in 1998?

A. I'm not sure I understand the question.

MR. MOHRMAN: Let me object on the grounds of vagueness. Counsel, you need to define – there is a point in time where a judicial candidate has to officially file with the State to become a candidate and before that, you know, people can kind of run exploratory campaigns or go out there and say, "I'm thinking about running," so maybe you need to clarify the question.

MR. VASALY: And before that, they can decide that they're going to become a candidate.

BY MR. VASALY:

Q. And my question is: Do you recall when you decided to become a candidate?

MR. MOHRMAN: I'm going to object on the same grounds, define the word candidate. Make sure when you answer his question that you define it, and also explain, you know, where – what your decision-making process was prior to the time of you actually filing with the State.

A. I think that the code itself talks about what is or is not a candidate, Canon 5, and that, if I remember that definition, it occurs perhaps as soon as the person [47] says – announces to anyone their desire to run for the office and I did that probably sometime in January or February of 1997.

BY MR. VASALY:

Q. What happened, if anything, between the time that you determined to withdraw as a candidate in 1996 and your announcement that you were a candidate for the 1998 election to cause you to become less apprehensive about possible prosecution by the Lawyers Board?

A. I didn't feel I was violating Canon 5 or the rules or that my conduct or my speech or other things.

MR. MOHRMAN: Could you read the question back for a minute.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Mr. Wersal, one way that question can be read is that it assumes that you became

less apprehensive that you would be prosecuted by the Lawyers Board and the other possibilities that I thought was that you maybe said I don't care whether I'm prosecuted or you made a decision that you would file this lawsuit and challenge the constitutionality and I just want you to be aware that there is an assumption in that question that you actually became less apprehensive that you would be prosecuted and maybe you didn't become less apprehensive, [48] you just didn't care or were willing to put up a challenge or became smarter about the announce clause and all that stuff, so . . .

A. I will try to answer your question understanding what he's just said. I think what Mr. Mohrman has said is true, I don't think I was less apprehensive with regard to what the Board might do. The question is was I less – I was somewhat less apprehensive about whether a complaint would be filed because there was an educational process going on within the Republican Party where I was attending many gatherings about what judicial candidates could or could not do and whether or not what I was or was not doing was a violation, so that's one thing that occurred. There might have been others, but that's the one thing that comes to mind right now was that the educational process seemed to make it less likely that a complaint would be filed in the first place.

BY MR. VASALY:

Q. Did you also have the intention in 1997 of filing a lawsuit challenging Canon 5?

A. In 1997, no.

Q. After you announced in 1997 that you were again a candidate, did anything happen which made you more apprehensive about the threat of prosecution by the Lawyers Board?

[49] MR. MOHRMAN: Could you read that back.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MORHMAN: Through to today, Tom?

MR. VASALY: I'll leave it open ended.

MR. MOHRMAN: So, from 1997 to today if the Lawyers Board has made you more apprehensive about the –

MR. VASALY: Let's read that back again.

(Whereupon the requested portion of the record was read by the Court Reporter.)

A. Yes.

BY MR. VASALY:

Q. What was that?

A. I attended a congressional – excuse me, I'm not sure whether it was a congressional district convention or a State district convention and an individual stood up, objected to my presence at the convention, tried to prevent me from being allowed to speak, said that what I was doing was unethical. It seems to me that happened in March, April, May of 1997. And so it brought back home to me that the educational process was leaving something to be desired, that there were still people out there who

were very hostile to my mere attendance let alone speaking or what I had to say at these conventions and, of course, another thing that eventually occurred were the changes made by the Supreme [50] Court and they took up consideration of those changes I think in October or November, October.

I asked various judges to recuse these ideas and they would not, they seemed hostile to that idea.They came up with a rule that I thought absolutely infringed on First Amendment rights and freedom of association as well as free speech, and again, I think that indicated a hostility to me and that meant I had to be all the more careful.

Q. When the Supreme Court considered the rule amendments in late 1997, did it consider any proposals with respect to the announce clause?

MR. MOHRMAN: If you recall. Again, Greg, this isn't a history exam. Whatever they considered is in the public record.

A. I don't know what went through their minds. I do know if you look at the records of what happened in '94 and '95, that the Supreme Court had considered changes to the announce clause and had basically laid that on the table was kind of the impression I got and that they could take that issue up at any time.

BY MR. VASALY:

Q. In late 1997, you did not ask the Supreme Court to make any changes in the announce clause, did you?

A. No.

Q. And approximately February of 1998 you asked [51] the Director of the Office of Lawyers Professional Responsibility for an advisory opinion concerning Canon 5?

A. Again, I can't remember. I asked for several advisory opinions.

Q. Okay.

A. The exact date, I'm not sure.

Q. As you sit here today, can you recall anything that the Director said in response to your advisory opinions that made you feel threatened with prosecution with respect to the announce clause?

MR. MOHRMAN: The Director specifically, Counsel? Do you know who the director is?

THE WITNESS: I think at the time it was Cleary.

A. Look it, I asked for several advisory opinions. I'm not sure any of them, without looking at them, I'm not sure whether they dealt with the announce clause, they dealt with campaign activities. The most recent – one of them, for instance, dealt with my ability to go to a public place and/or my campaign committee and hand out literature at a college campus when we found out there was going to be a convention in one room on the college campus.. The Director refused to answer or provide me an advisory opinion which I understand they have a right to do, but it didn't clarify the situation and made me again [52] realize that if there is a question in their mind about whether I can even be in a public place,

then there is perhaps questions as to exactly what position they're going to take with regard to the announce clause.

You're trying to separate out the announce clause from everything else and I just want to tell you that when you're running a campaign, all these things are interplaying and when I'm told I can't go to – be, for instance, on a public sidewalk, you start to wonder how far are they going to enforce the other types of restrictions that are there, that are available to them if they want to push it.

BY MR. VASALY:

Q. Well, for example, do you wish to be able to identify yourself publicly as a Republican when you run for judicial office?

MR. MOHRMAN: Don't answer that for a minute.

MR. KAARDAL: I object because it calls for a hypothetical situation because we all know Greg is not currently a judicial candidate.

MR. MOHRMAN: Could you read the question back to me.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Okay. Go ahead and answer.

[53] A. I think candidates should be able to identify themselves if they wish.

BY MR. VASALY:

Q. And do you personally wish to do so should you run for a judicial office?

MR. MOHRMAN: Identify himself as a member of the Republican Party or identify himself as a member of any political party?

BY MR. VASALY:

Q. Are you able to answer?

A. I'm not sure that I would want to or wouldn't want to because you may want to do that for a whole variety of political reasons, understand? And – but I think it's a decision that the candidate should be able to make with whoever he's consulting with on how he's going to run his campaign.

Q. Do you intend to become a candidate for judicial office again?

MR. MOHRMAN: Again, it's not a history exam.

THE WITNESS: He's asking about the future.

MR. MOHRMAN: That's what I mean.

A. If I can have free speech rights and I can discuss my views on cases, if I could seek an endorsement of [54] a political party, if I can go out and talk to the groups of people I want to talk to and freely associate, I might consider it, but right now the rules that exist make it almost impossible for anyone to conduct one of these campaigns and win and there is no other purpose to

doing this if you're not going to have a chance at winning.

BY MR. VASALY:

Q. Do you wish to be able to personally solicit campaign contributions should you run for judicial office again?

MR. MOHRMAN: Let me again note an objection on the grounds of vagueness. You meant that he would personally solicit funds to be paid to him personally or that he would solicit for people to contribute to the campaign?

MR. VASALY: Either.

A. I think that a candidate, if a candidate wishes, should be able to solicit funds in ways that are now prohibited by Canon 5 or at least the Lawyers Board, what they have told me as to how they would enforce Canon 5 with regard to that issue. For instance, I've been told that if I stand in front of a crowd at a podium and there is a thousand people in front of me and I say as a candidate, "By the way, my campaign needs money," that that is a personal solicitation of funds, yet I fail to see how I have created [55] any undue influence on any of those thousand people. I've been told that as a candidate if I would send out a letter to people that is signed by me that says, "By the way, we need campaign funds," that that would violate Canon 5. And again, I fail to see how that creates a situation of any kind of undue influence.

I think that there is a desire to prevent influence with the judges and that can be accomplished by other means that are already in the canon, for instance, that the funds

actually go to a campaign committee who can not disclose to the candidate who gave the funds, but to prohibit the candidate from actually asking for money in any way, what you have done is you have made it virtually impossible for anyone to run these campaigns, especially when you're talking about campaigns on a state-wide basis. What you're finding is that the only way people can run for these is either they're the incumbant and have all the benefits of incumbancy and they privately fund them, and to be honest with you, I'm not sure I see any great benefit to having people purchase judgeships by being independently wealthy. I think the system has, as it is now, has corrupted the election process that our constitution in Minnesota provides for.

BY MR. VASALY:

Q. Do you wish to meet personally and privately [56] with potential contributors and tell them that you need money for your judicial campaign?

A. To be honest with you, I'm not sure whether I want to do that, but I'm not sure that candidates shouldn't be allowed to do that.

Q. Do you –

A. In other words, you're asking me to decide hypothetically as to how I would run a campaign were the rules open and I'm not sure hypothetically how I might run a campaign. I can only tell you what the rules do now which is they are drastic in their effort to prevent candidates from in any way asking for money.

Q. Do you wish to be able to announce to voters your opinions on cases presenting issues on abortion, welfare and crime?

A. Again, it's a hypothetical, I wasn't able to do that. I mean, if your question is should candidates be allowed to discuss cases so long as they do not – I mean, I think they should be able to discuss cases far more than they can under the rule. Some Courts say they can discuss cases as long as they do not commit themselves. Some Courts have said that's a fair constitutional restriction, but that reading is far more than what we're allowed to do now.

Q. Mr. Wersal, just to be clear, I'm not asking what the rules say what candidates can and cannot do. I'm [57] asking what you would want to do should you run for judicial office again, I'm asking you about you personally, and so I'm asking whether you would want to, for example, indicate that you would handle certain types of cases differently from the way the incumbants have handled them?

A. Again, I think I indicated to you earlier that if I had my preference, I would be trying to discuss process and the correct balance between the Court and the legislature and that I think we have a type of judicial activism in Minnesota and that by making the voters aware of the process, I think they can get a better understanding of what judges do, what types of decisions they are making and then would be able to make an intelligent choice at a voting booth.

Q. Would you wish to announce to voters that you are anti-crime?

MR. MOHRMAN: That's a pretty specific question, Mr. Wersal. I don't know if you want to phrase it that way, it's again a hypothetical. You don't currently have a campaign running.

A. I don't know of anyone who would get elected saying they were for crime, so let me put it to you this way: If I had been able to discuss cases more, I might have been able to show what types of cases my opponent had voted on and how they had voted and discuss the logic behind those [58] decisions, so I'm not sure that's a statement that I'm anti-crime so much as, again, that the people need to make some intelligent decisions about what their Courts are doing.

BY MR. VASALY

Q. If you were running for judicial office, would you wish to be able to publicly announce your position as to whether a woman had a right to an abortion?

MR. MOHRMAN: Can you read the question back.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. KAARDAL: I object on the grounds of vagueness, again, it's the process versus the end result. You could agree with the result but disagree with the process and that's the end of my objection.

MR. MOHRMAN: Same objection, and it's hypothetical. He's asking you in this specific question whether you would want to specifically announce that in your campaign and if you know right now what you'd do, tell him.

A. I would say no.

BY MR. VASALY:

Q. No, you wouldn't want to make such an announcement, or no, you don't know, I'm not sure?

A. No, I don't want to make that announcement.

Q. All right. Would you wish to make –

[59] MR. MOHRMAN: Are you done with your answer?

A. I would like to add something to clarify. There is a different question which is what candidates should be allowed to discuss and not discuss. I just simply told you if it was left to me, I don't want to discuss it.

BY MR. VASALY:

Q. So you personally don't wish to announce your views on these issues but you believe that candidates should have that right; is that your testimony?

MR. MOHRMAN: Well, that's a misstatement of testimony. You asked him if he would wish to announce his views on whether a woman has a right under the constitution to an abortion. You are now boot strapping all possible issues into the question.

MR. KAARDAL: On behalf of my clients, I make the same objection.

MR. MOHRMAN: Do you understand the distinction, Greg?

THE WITNESS: I think I got lost.

MR. MOHRMAN: Well, he asked you before if you would wish to announce your views on abortion and you said no, you probably wouldn't, and now he's asking you, "So, you're not wanting to announce your views on any of these issues," and that wasn't your answer.

[60] A. Mr. Vasaly, I'm sorry, to be very honest with you, I'm not sure what your question is at this point in time and if you could rephrase it, I'd certainly appreciate it.

BY MR. VASALY:

Q. Let's back up. First of all, do I understand you correctly that you personally don't intend to announce your views on abortion rights but you believe that candidates should have that right in the abstract; am I correct?

MR. MOHRMAN: If you can answer, Greg.

A. I believe candidates have First Amendment rights and should be able to discuss cases, whether it's about abortion, adoption or crime intelligently with voters who can then make an intelligent decision. I mean, the question becomes how much can they discuss and how much can't they discuss and if you want to draw a line somewhere, I'm saying if you want to draw a line, make it a bright line so everybody knows where it is, but where the line is now, in essence, these things can't be discussed, candidates cannot state any views and either views that don't commit themselves as to how they would decide a case and it just seems the line is drawn in the wrong place and what we've done is we've closed down free speech for candidates.

BY MR. VASALY:

[61] Q. Do you wish to be able yourself to state your position as far as abortion rights is concerned should you run for a judicial office?

MR. MOHRMAN: If you can answer. He's again asking you a hypothetical.

A. I want to be able to decide that when I run, that's what I want to be able to do. When I'm a candidate, I want to be able to decide what I want to say or not say and have a bright line somewhere if there is something I can't say so I don't have to worry about whether I'm going to have an ethical violation. The people deserve a bright line as well. Right now the bright line either doesn't exist or it's been moved so far to one side that we have closed down all discussions.

BY MR. VASALY:

Q. One of the Plaintiffs in this case is Michael Maxim?

A. Okay.

Q. Do you know Mr. Maxim?

A. I know who he is, yes.

Q. Could you describe your relationship with him?

A. I think I met Mr. Maxim in 1996 and if I remember right, at the time he was a Chair of the Eighth Congressional District or a Co-chair of the Eighth Congressional District Republican Party and I had probably a [62] couple phone calls with him in 1996. I'm just trying to remember if I – that's how I met the guy.

Q. Have you had any communications with Mr. Maxim since January 1, 1997?

A. January 1 of 1997? Anything is possible I suppose, but I don't remember any.

Q. And in 1996, did your discussions with Mr. Maxim include discussions concerning your candidacy for judicial office?

A. I'm sorry, what was that?

Q. When you talked to Mr. Maxim in 1996, did you talk about your campaign to become a judge?

A. Yeah, sure. And Mr. Vasaly, I can think of an instance I think in early '97 where I had some conversations with Mr. Maxim.

Q. Did the 1997 conversations also include references to your candidacy as a judge?

A. Yes.

Q. Did Mr. Maxim support your candidacy as a judge?

A. I think the answer to that is no. It depends on how you're going to define the word candidacy, but the answer I would give you is no.

Q. At any point did you request that Mr. Maxim take any action on your behalf with respect to your judicial [63] candidacy?

A. If he was a Chair or Co-chair back in '96, I probably could have very well asked him if I could speak at his convention. Other than that, none that I remember.

Q. So you never asked him to seek Republican endorsement on your behalf, correct?

MR. MOHRMAN: If you recall. And vague as to time.

A. That's what I was going to say.

MR. MOHRMAN: What time period are we talking about?

BY MR. VASALY:

Q. At any time.

A. I've never asked anybody – well, let me clarify this. I don't believe I've ever asked anyone to endorse me. Candidates are prohibited from seeking endorsements, but it is possible he received campaign letters from my campaign committee people that asked him to take that action.

Q. Do you have any reason to think that they might have?

MR. MOHRMAN: They might have what?

MR. KAARDAL: I'll object to vague, I don't know what year we're talking about.

BY MR. VASALY:

[64] Q. Well, what year are you talking about, Mr. Wersal, when you're saying that you don't know whether the campaign committee might have asked him – strike that. Do you have any knowledge or reason to believe that your campaign committee at any time asked Mr. Maxim to take any action on your behalf?

A. To be honest with you, specific literature or specific action directed to him, no.

Q. Do you have any reason to believe that your campaign committee at any point might have been attempting to seek the Republican endorsement on your behalf?

A. Yes.

Q. In 1998?

A. No.

Q. In 1996?

A. In 1996.

MR. VASALY: I have no further questions.

MR. LEVINGER: I have some.

CROSS-EXAMINATION

BY MR. LEVINGER:

Q. Could we look at – what exhibit do you have in front of you?

MR. MOHRMAN: He has all four of them.

BY MR. LEVINGER:

[65] Q. Let's look at Exhibit 4, Mr. Wersal.

A. Okay.

Q. I realize before when you testified you were not sure if this had ever been distributed. In this document it is intended to convey that you were critical of some of the

decisions of the Minnesota Supreme Court; is that correct?

A. Look it, I think the answer to that is actually no, and again, I will try to explain to you why and maybe we're parsing words or whatever and I'm trying not to do that, but as much as possible, I tried in my campaign to exercise my free speech while staying within what I understood to be the bounds of Canon 5, so we would put together a brochure, which is what this is, which would state what happened in a case and frequently what the dissent was. It was not necessarily intended to convey my opinion, in fact, I would argue strenuously it was not, it was meant to make people think about what their Courts are doing, whether they agree or disagree and whether they have some means to take action if they disagree either with the outcome or the process.

Q. You've talked about the process a number of times. What do you mean by that?

A. The process?

Q. Yes.

[66] A. Okay. I think that Courts have – are criticized frequently for being activists and what the criticism is is that they're assuming roles more appropriately handled by either the legislature or the executive branch.

Q. If you were not – did not feel constrained in the last election by Canon 5, would you have indicated to groups of voters that you disagreed with certain specific decisions of the Minnesota Supreme Court?

A. I'm not sure if I would have said I disagree with specific decisions. I am quite sure I would have been able

to say that I disagreed with the process by which those decisions were arrived at.

Q. Focusing on –

MR. MOHRMAN: Are you done with your answer, Greg, or not?

THE WITNESS: Yeah, I think I am.

BY MR. LEVINGER:

Q. I'm sorry, I did not mean to interrupt, I thought you were done, too. Focusing on the first decision, Doe versus Gomez, the first issue here, do you believe that you or another candidate should have the discretionary decision making in running a campaign to indicate that the candidate disagrees with the result in this decision?

MR. MOHRMAN: I want to talk to my [67] client. Can you state that again.

(Whereupon the requested portion of the record was read by the Court Reporter.)

(At this time a brief recess was taken.)

MR. MOHRMAN: Back on the record.

A. I think that – I think candidates have to be able to discuss these cases far more than we can under the current rule if voters are going to make an intelligent decision. Where you want to draw that line I think is a question – so that the canon is constitutional I think is something you're going to have to decide. I'm not here to tell you how to draft this stuff, I'm here to tell you that

what you've got has created an impossibility, it has eliminated free speech, it has abrogated people's election rights.

BY MR. LEVINGER:

Q. Are you –

A. And in a certain respect you're asking me to give a hypothetical as to what is the perfect world out there, what is it that would be for a candidate, what is this panacea we're trying to reach and I don't have an answer for that. I'm simply trying to tell you that what we have here and what we're dealing with is too restrictive and there are other legal minds out there who can hopefully sit down and come up with a rule that is constitutional and [68] provides candidates the maximum amount of free speech and to meet whatever compelling State interest, if any exists, but what we're dealing with here isn't, it doesn't make it.

Q. Do you think, in your opinion, there is any compelling State interest in a prohibition on candidates for judicial office saying anything about particular decisions that have been made by the Court they're running for?

MR. MOHRMAN: If you can answer that question, Mr. Wersal. I mean, Counsel, we're not here today to assist your client in drafting a constitutional code, we're here today because the code you've drafted is unconstitutional and we're suing on that and your question is essentially asking Mr. Wersal a hypothetical whether he thinks he should be able to say such and such if there was no code, would that be okay with him. We're not here to answer those questions here today. We don't know

because your client has put in a judicial code that has put my client at exposure of losing his legal license and we believe that code is unconstitutional.

BY MR. LEVINGER:

Q. Can you answer the question?

A. To be quite honest with you, I don't think I understood the question when it was asked.

Q. Let me try again. You indicated in response to your – or to a previous question that you think that the [69] code restricts too much your speech or other judicial candidates can have; is that correct?

A. Yes.

Q. You also said in response to a previous question that voters should have more information and candidates should be able to discuss more about specific decisions; is that correct?

A. Yes.

Q. If you had not been restricted in your last campaign by Canon 5, you would have discussed some of these cases in Exhibit 4 in more detail than is set forth here?

A. Yes.

Q. And in a number of these, or maybe all of these, is it correct that you think that they are examples of improper judicial activism?

MR. MOHRMAN: Well, take a look at them.

BY MR. LEVINGER:

Q. Let me add to that. It states, "Here are just a few examples of recent judicial activism"?

A. Uh-huh.

Q. So you regard these as being examples of judicial activism?

MR. MOHRMAN: Let's again be clear about this particular exhibit. Mr. Wersal was not sure –

BY MR. LEVINGER:

[70] Q. I'm not saying did you say that, I'm saying do you believe that the eight cases listed here are examples of judicial activism which is a process of the Supreme Court with which you disagree?

MR. KAARDAL: I object on the basis of vagueness on behalf of all my clients.

A. I think they are examples of cases where people could reasonably conclude there was judicial activism. Some people may disagree with that, others would not. And again, my – I'm not sure this piece was again ever sent out and if you compare it with the language of Exhibit 3, again, the purpose here was to set out facts and set out cases to be quite honest trying not to state my opinion and to leave it to the reader to decide for themselves based on what the Court has said or done and what other people have said or done about that case, usually a dissenting judge.

BY MR. LEVINGER:

Q. Leaving aside Canon 5 again, is it correct that you would like to give or would have liked in the last campaign to give your opinion about these cases?

A. I would have liked to have been able to talk about them a lot more than I was, specifically the criminal cases because I do a lot of criminal defense work and that's the area I was most familiar with. That was an area in which I thought there were numerous – several decisions [71] that Mr. Page participated in that I think would have caused question in the minds of voters.

Q. As a candidate against Mr. Page, Justice Page, if you had not been constrained by Canon 5, would you have stated with respect to certain decisions in which he voted that you disagreed with his vote?

MR. MOHRMAN: Read his question back.

(Whereupon the requested portion of the record was read by the Court Reporter)

BY MR. LEVINGER:

Q. The question is if there was no –

MR. MOHRMAN: If there was no Canon 5 out there, would you represent – well, also assumes that Justice Page could criticize you as well.

MR. KAARDAL: I object, it calls for a hypothetical and vagueness. As Mr. Wersal has already stated, he objects to the process, so the fact that this case would never have come up if the Courts had proper understanding of jurisdiction I think is very important. Additionally,

it seems to me that Mr. Wersal has repeated over and over that what he wants is judges to be mutual. Judicial activism is not being for neutrality and it doesn't state the case.

MR. VASALY: And I object to the objections. I think that there has been a tendency to go [72] over the line from simply stating the objection to preserve it to attempting to interpret the question or suggest possible answers and I do object to that.

MR. MOHRMAN: I apologize if you got that impression, Counsel, that has not been our intent. I think the questions have been very vague and I'm not going to let my client get into trouble here today and give responses that are – that would be untrue based upon interpretation of a question or would harm his case because I'm very confident that if we had a judge in the room, that the questions would be struck down on objection and the objection would be sustained and you would have to rephrase them in a tighter manner, it is not my attempt to coach the witness.

MR. KAARDAL: The objection to the objection came after my objection and my concern is that at the beginning of this deposition, the lawyer for the Lawyers Board and for the Office of Lawyers Professional Responsibility would not stipulate that he would not bring complaints of ethical violations based on his statements today. It seems to be very reasonable in the situation where one is giving sworn testimony that he should have a very precise understanding, specifically when it can be a basis of an ethical complaint.

MR. LEVINGER: This question and the [73] previous few I've asked have asked Mr. Wersal to assume that Canon 5 did not exist, so certainly nothing I'm asking him could remotely be used as something against him since he's not asked to admit anything that he has done or would do if Canon 5 existed.

BY MR. LEVINGER:

Q. Do you remember my question, Mr. Wersal?

MR. MOHRMAN: If you can remember it, Greg.

(Whereupon the requested portion of the record was read by the Court Reporter.)

A. If you assume that Canon 5 does not exist and then, therefore, assume I could have said anything I wanted to say short of a falsehood, let's say, then I may have said that I disagreed or I may not have said that I disagreed based on a political decision at that point in time.

BY MR. LEVINGER:

Q. Since you are or were running against Justice Page, obviously you disagreed with a number of things he did as a justice, correct? Let me ask another question, maybe I am assuming something.

A. Yeah.

Q. May I assume that you were running against Justice Page because you disagreed with some of the decisions he voted on as a justice rather than simply that [74] you yourself wanted to be on the Supreme Court?

A. Well, I think both of those factors played a role as well as probably many others.

Q. Okay.

A. And I don't know how I would balance them out.

Q. Again, if Canon 5 did not exist and you – let's take last year when you were running in a campaign, would you have liked to have had the option to respond to a question from a voter, let's say, on State versus Scales, if a voter had asked you, "How would you have voted on State versus Scales?" would you have liked to have the option to answer that question?

A. Just to be clear in my mind, your question is if I would say something –

MR. MOHAMAN: Have her read back the question.

(Whereupon the requested portion of the record was read by the Court Reporter)

MR. MOHRMAN: He was asking if a voter asked whether or not you would vote differently on State versus Scales. All he's asking you is whether you wanted the option if there was no Canon 5.

A. Okay, I understand. The Scales decision deals with what type of evidence we're going to allow into Minnesota Courts and it would seem to me that that is a [75] public issue that should be discussed publicly and that all the voters in Minnesota should have some say on what type of evidence we're going to allow into our Courts. It deals with an administration of justice and

perhaps – you're asking me a hypothetical where Canon 5 doesn't exist. Perhaps this would be an instance where as a candidate, yes, I believe this type of evidence should be allowed in our Courts and that the voters should be able to hear that and understand that and have a say on it at an election booth.

I want you to understand again, one of my great criticisms, if I was to criticize that case, would be to deal with the process, although I'm not sure I'm happy with the decision, but the process which the case if you read it is not decided on a constitutional basis, the Court specifically says we're not basing this on Minnesota constitutional law but they set up a policy for what type of evidence was going to be allowed and they do that without any input from prosecutors, without input from police, without input from members of the public who might have an interest, defense attorneys as to how – or Trial Court judges, none of these people have any input into the system as to what type of evidence we're going to allow in and it would seem to me that that is a case where people should be able to have input.

BY MR. LEVINGER:

[76] Q. As –

MR. MOHRMAN: Counsel, or Mr. Wersal, I don't think you responded to his question and I would – he didn't ask for a long, rambling explanation about what you thought about Scales, he asked you whether you thought you should have the option to discuss it with the voters and I'm not asking you to reanswer the question. I want you to answer his questions carefully and answer only his questions.

THE WITNESS: I thought I did.

BY MR. LEVINGER:

Q. And there is no question pending right now so you shouldn't be talking. As a judicial candidate or if you were a judicial candidate, assuming Canon 5 did not exist, would you like the option in talking to a voter of saying if you were on the Supreme Court, you would vote to overrule State versus Scales?

A. Again, you're assuming Canon 5 doesn't exist. I don't know what I would have – I don't know that I wanted to say that. I know that I wanted to say that I disagreed with the process, that I though all those various groups that I mentioned before should have input into the process and then I think a Court can make a reasonable decision, but without proper input, we don't know that we have a proper result.

[77] Q. Would you disagree that if a candidate for some other office, say State legislator, were asked a question about whether he or she would vote to reverse some law, there is no ethical reasons why they could not say yes or no?

A. I'm not aware of what their ethics rules are.

Q. Do you feel that it is in some manner inappropriate for a candidate for a judicial office to say that he or she would vote to reverse State versus Scales or some other decision?

MR. MOHRMAN: Objection, vague, Counsel, and I'm going to instruct my client not to answer until you define what inappropriate is. We're dealing with the law and whether or not my client is violating the law,

we're not dealing with what my client's philosophy is if he was given the power to draft the Minnesota constitution.

MR. LEVINGER: Let me rephrase.

MR. MOHRMAN: If we were in the Soviet Union, people would think that's inappropriate. If you're in a completely –

MR. LEVINGER: I'm withdrawing it. Don't make a speech, I'll get on with it.

BY MR. LEVINGER:

Q. As a candidate for judicial office, again assuming Canon 5 did not exist, do you feel that you would like the option of telling a voter in response to a question [78] that yes, you would vote to reverse State versus Scales if the opportunity came up?

A. Okay –

MR. MOHRMAN: Well, I'm going to –

BY MR. LEVINGER:

Q. Let me rephrase it. Do you think it is important information for the voters to have from you as a candidate for judicial office, again assuming Canon 5 did not exist, if a voter were to ask you, "Will you vote to reverse State versus Scales if the opportunity arises?"

MR. MOHRMAN: Again, it's a hypothetical.

A. Yeah, again, it's a hypothetical. You're assuming Canon 5 doesn't exist. You're assuming it's a free wheeling, no holds barred, everything can be said, than I think

it's going to be a political decision as to whether you're going to or not. Some candidates will, some candidates won't.

MR. MOHRMAN: Do you have much more?

(At this time a brief recess was taken.)

BY MR. LEVINGER:

Q. Let me move on to another topic. You wanted to – according to your complaint, you wanted to engage in a variety of what I would call partisan – campaigning with partisan groups such as the Republican Party, correct?

A. Republican Party, the Reform Party, the [79] Democratic Party, there is about four or five other parties I can think of.

Q. You initially were saying that you actually made efforts previously to make appearances and seek endorsement from the Republican Party or your campaign committee made an effort to seek endorsements; is that correct?

A. That's correct.

Q. Are you familiar with the platform passed by the Republican Party at its convention in 1998?

A. I know they made some changes, I'm not completely familiar with it.

Q. Are you familiar with the previous years' platform, 1996 or 1994 or something?

A. No.

Q. Okay.

A. Not to any great degree, no.

Q. Are you familiar with what the platform says specifically about the abortion issue?

A. No.

Q. Are you aware in either 1998 or 1996 whether there were any votes taken at the State convention or resolutions adopted about abortion?

A. I have no idea.

Q. Would it be your understanding that most of the [80] people who would attend the Republican Party convention would disagree with the Doe versus Gomez decision?

MR. MOHRMAN: Objection, speculative.

A. I have no idea.

BY MR. LEVINGER:

Q. If you were appearing – again assuming that Canon 5 didn't exist, if you were appearing at a Republican convention and one of the delegates asked you something like, "do you agree to abide by the Pro Life platform of the Republican Party?" would you like to have the option of saying yes or no to that?

MR. MOHRMAN: Hold on. Could you read the question back.

(Whereupon the requested portion of the record was read by the Court Reporter)

MR. MOHRMAN: Again, objection, speculative, hypothetical.

MR. KAARDAL: Same objection.

MR. MOHRMAN: Answer it if you can, and again, he's just asking you if you want to have the option.

THE WITNESS: Well, again, he assumed Canon 5 didn't exist.

A. And then I think you're back to assuming that if Canon 5 doesn't exist, it's a political decision of what a candidate is going to say or not say.

[81] MR. MOHRMAN: I'm also going to note Mr. Wersal does not have the Republican Party platform in front of him. I mean, I think it would be – I would assume it's probably anti-abortion, but we don't know what the language is, but that's an assumption and I don't know what the platform is of the Republican Party on abortion.

BY MR. LEVINGER:

Q. Mr. Wersal, in an effort to gain endorsement by the Republican Party at the State level at some of its earlier conventions, assuming again that Canon 5 did not exist, would you have as a judicial candidate wanted to have the option of telling the candidates that you agreed with certain of the planks in the Republican Party platform?

MR. MOHRMAN: Objection, speculative, hypothetical.

A. Let me try to answer. First of all, I'm not sure what's in the Republican Party platform, but I want you to understand that if we assume Canon 5 doesn't exist, then aren't we making the assumption that candidates

can say whatever they want to say unless there is some other restriction such as that they can't state something false, and at that point in time it's going to be a political decision as to what you want to say or don't want to say and what answers you'll give or won't give to questions.

BY MR. LEVINGER:

[82] Q. You've labeled this as being, at least in your view, a political decision as to what answers to give assuming you weren't constrained by Canon 5. Would you feel constrained not to respond to questions about how you would vote in a case that was before the Supreme Court?

MR. MOHRMAN: Again, objection, speculative and vague. Constraint by what, Counsel?

A. Again –

MR. MOHRMAN: I want you to note my objection, he's not defining what constraining means.

BY MR. LEVINGER:

Q. Can you answer the question?

A. To be honest with you, it sounds like a make believe world. You're asking me to assume no rules exist and then asking me if I feel constrained and why would you feel constrained if no rules exist? If rules are appropriate, if people should be restrained, then let's create the rules, let's make them a bright line so people know what they can and can't say, so we know where our free speech is, so we don't have ethical complaints made that are meaningless, so people's licenses aren't in jeopardy, so candidates can say as much as they can so voters can get

as much information as they need so they can make an intelligent decision.

Q. Do you see your candidacy last year as being [83] any different vis-a-vis a political party such as the Republican Party as compared to a candidacy for any other State wide office – a non-judicial State wide office?

MR. MOHRMAN: Would you read that back.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Again, I hate to do it again, Mark, but I think the question is very vague. The number one end –

MR. LEVINGER: I'll start over.

MR. MOHRMAN: Question stricken?

MR. LEVINGER: Yes.

BY MR. LEVINGER:

Q. In terms of what you would like to do if you were not constrained by Canon 5 in terms of running the State wide judicial campaign, would you feel that you would like to have the option of doing anything of a political nature that other State wide candidates can do such as governor, attorney general, et cetera?

A. I'm sorry, I don't think I understood the question. I tried to listen as close as I could and I'm sorry, I don't think I understood it.

Q. Okay. You want to do certain things of a partisan nature in relation to appearing before political parties,

seeking their endorsement; I presume if you got an [84] endorsement, you would like the party to be able to publicize your candidacy; is that correct?

MR. MOHRMAN: Go ahead. Well, objection, it's hypothetical. I mean, your first two parts of your question because what Greg is challenging in this lawsuit is the abilities of him to seek the endorsement and also to appear in front of the Republican Party, telling the Republican Party what to do if they endorse their candidacy.

BY MR. LEVINGER:

Q. If the Republican Party had endorsed your candidacy, would it be your desire, assuming that Canon 5 didn't exist, that the Republican Party would use or you could use the Republican Party's endorsement to bolster your campaign?

MR. KAARDAL: I'm going to object on the vagueness, repeatedly on a lot of the questions, if Canon 5 doesn't exist. I'm confused because the subject of the lawsuit is only five portions of Canon 5 and I don't know if he's referring to those five sections or all of Canon 5.

MR. MOHRMAN: I don't have any objection, that's fine.

A. If Canon 5 does not exist, again, there is no prohibition on what candidates can or cannot do. It would seem logical to me that candidates that have been endorsed by any group would want to use that endorsement in some way [85] to say that hey, some group has thought that I'm a legitimate candidate and that that would be used to bolster your campaign.

BY MR. LEVINGER:

Q. And again assuming that the canons did not prohibit it in a judicial campaign as a candidate, would you also hope to have a political party that endorsed you to use that endorsement in its own literature or perhaps on its sample ballot?

MR. MOHRMAN: Could I have it again.

A. I can just answer it.

(Whereupon the requested portion of the record was read by the Court Reporter.)

MR. MOHRMAN: Let me clarify, it was not clear in the question, Mark. It's our understanding that there is absolutely nothing that's prohibiting the Republican Party of Minnesota from endorsing Mr. Wersal, the issue is whether Mr. Wersal or any other candidate can go before the party to seek the endorsements. The state of the law of a Political party, they have the First Amendment right to do that and publicize it to their judicial district.

MR. LEVINGER: Well, I'm asking him if a candidate –

MR. MOHRMAN: If he would like it if they [86] would go around the State trumpeting him? Can you answer that, Greg?

MR. LEVINGER: I thought it was a very easy question.

A. That's why I said let me just answer it. I think emphatically you want every and any and every group if

you're running for a political office to try to – if they support you, to get that information out to their members whether through a sample ballot or whatever means they want to use to talk to their members, but that's part of running for office and educating voters. Those – understand, those people aren't simply members of a political party, they are voters, and that's what's so disturbing about the way the rules are constructed is that other types of voters who don't belong to a political party get the information but it's being kept from certain groups of people.

MR. MOHRMAN: For instance, groups of lawyers can be solicited for their endorsement, not that they would have any interest in influencing judicial decisions.

MR. LEVINGER: I have no further questions.

MR. KAARDAL: I have no questions, but I would like to ask Mark, where do you want your brief served? Do you office here?

[87] MR. VASALY: I have a couple more questions.

(At this time a discussion was held off the record.)

RECROSS-EXAMINATION

BY MR. VASALY:

Q. Mr. Wersal, is there a compelling State interest in the Judicial Board's regulation of judicial campaign speech?

MR. MOHRMAN: Objection, calls for a legal conclusion for Mr. Wersal.

A. I don't think it's an area of law it should be involved in at all. I think the answer is no, I think it's the legislature who is to control our elections and if the legislature would pass the law defining what candidates can or cannot do, that might be an appropriate forum.

BY MR. VASALY:

Q. Would the legislature have a compelling State interest in regulating the speech of judicial candidates?

MR. MOHRMAN: In this State? I want that clarified.

BY MR. VASALY:

Q. Okay, Minnesota?

A. I have no idea. That's for you to prove that [88] you have one.

Q. Does the State have a compelling State interest in regulating a judicial candidate's ability to solicit campaign funds?

A. I have no idea. That's again for you to try to convince a judge that there is such a thing, I have no idea.

Q. Does the State have a compelling State interest in regulating party identification and party endorsement of judicial candidates?

MR. MOHRMAN: Again, objection, calls for a legal conclusion from the witness. Mr. Wersal, if you think you can answer it right now going through – I mean, that's the heart of the legal issue in this lawsuit and we're preparing papers right now and are in consultation with you and if you're prepared –

A. We're arguing there is no compelling State interest, sir, that it doesn't exist.

MR. VASALY: No further questions.

MR. KAARDAL: I have no further questions.

MR. MOHRMAN: I have no further questions. We'll read and sign.

(At this time, 4:10 p.m., the deposition was concluded.)

[89] (UPON COMPLETION, forwarded this Original Reading and Signing Certificate to Attorney Thomas C. Vasaly, who already has the Sealed Original.)

GREGORY F. WERSAL

I, GREGORY F. WERSAL, do hereby certify that I have read the foregoing transcript of my Deposition and believe the same to be true and correct (or, except as follows, noting the page and the line number of the change or addition desired and the reason why):

Page	Line	Change or Addition	Reason

Dated this day of , 1999.

[90] STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

Be it known that I took the deposition of GREGORY F. WERSAL, on the 25th day of January, 1999, at Saint Paul, Minnesota;

That I was then and there a Notary Public in and for the County of Hennepin, State of Minnesota, and that by virtue thereof, I was duly authorized to administer an oath;

That the witness before testifying was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in Stenotype by myself and transcribed into typewriting under my direction, and that the deposition is a true record of the testimony given by the witness to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

That the reading and signing of the deposition by the witness was executed as evidenced by the preceding page;

That Notice of Filing was waived.

WITNESS MY HAND AND SEAL this day of , 1999.

Kerri L. Brodock
Court Reporter

DEPO. EXHIBIT 1

VOTE
WERSAL
SUPREME COURT

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE

Judicial Elections:
The *only* means to judicial accountability.

The Minnesota Supreme Court has issued decisions which are marked by their disregard for the Legislature and lack of common sense. Judges must be held accountable.

CRIME: The Minnesota Supreme Court ruled that a criminal defendant has a legal right to avoid the Sentencing Guidelines established by the Legislature and receive a more lenient sentence.

WELFARE: The Minnesota Supreme Court struck down a state law designed to prevent people from moving to Minnesota only to collect the higher welfare benefits paid in this state. The Legislature should set our spending policies, not the Court.

ABORTION: The Supreme Court ruled that a woman's right to privacy under the Minnesota Constitution means not only does she have a right to abortion, but that the State *must use public funds to pay for it*. The dissenting judge remarked the Court "abandons all vestige of neutrality" in its pro-abortion stance.

An Important Message From Greg Wersal

"We need: Judges who will not legislate from the bench.
Judges who will strictly construe the Constitution.

That's why I need your support."

YES, Greg, I will support your campaign for the Supreme Court.

[ ] I can work on your campaign.
[ ] I've enclosed a campaign contribution of $___
[ ] I know a group that would like to hear you speak.

CONTACT ME AT:

name **address** **phone** ( )

MAIL TO

Campaign for Justice
7841 Wayzata Blvd.
Suite 201
Minneapolis, MN 55426

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE
(612) 546-3513

DEPO. EXHIBIT 2

VOTE
WERSAL
SUPREME COURT

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE

Dear Fellow Minnesotan,

I would like to tell you why to vote for me. However On January 1, 1998, the Minnesota Supreme Court created new rules on how judicial candidates can conduct campaigns. So before I go any further, I must issue to you the following **WARNINGS:**

1) This Letter Is Not A Request For Money. The Supreme Court has ordered that judicial candidates can not personally solicit money, even by letter. Some argue that this makes it impossible for a candidate to raise the funds to effectively challenge an incumbent and protects the influence of lawyers who give much of the money to judicial campaigns. But others say that the Court has acted to prevent the corrupting influence of money on judicial candidates; and, as our judges are honorable individuals, we have no reasons to doubt their motives.

2) This Letter Is Not A Request For An Endorsement. The Court has ordered that judicial candidates or campaign committees may not seek the endorsement of a political party; and as you may or may not belong to a political party, I would not want you to misinterpret this letter. Some have argued that this rule change, which allows other groups to endorse, such as lawyers, was done with the purpose of protecting incumbent judges from the accountability owed to the citizens in free elections. But others say the Court has acted only to prevent

the corrupting influence of politics on judicial candidates; and, as our judges have shown in the past that their decisions are above politics, we have no reasons to doubt their motives.

3) This Letter Is Not A Statement Of My Opinion. The Court has ordered that judicial candidates may not announce their views on disputed legal or political issues. Some have argued that this defeats the very purpose of an election, which is to allow an informed electorate to make a choice between candidates. Others say the Court has acted only to prevent candidates from taking positions on issues which will make it impossible for them to be impartial when presented with these issues as judges; and, as our judges have shown themselves to be impartial in their decisions, what is to be gained by having judges announce their views to the voters?

Neither in this letter, nor in the attachment, have I stated my opinion; but I have tried to present facts and the arguments of others so you may decide for yourself what to believe. Please do not confuse my having presented an argument, or the inadequacy of my presentation in this limited space, with my belief in the argument. With these warnings, I encourage you to read the attachment, and to vote for Greg Wersal, though the Court will not allow me to give you one good reasons to do so.

Yours truly,

/s/ Greg Wersal
Greg Wersal

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE
(612) 546-3513

DEPO. EXHIBIT 3

VOTE
WERSAL
SUPREME COURT

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE

JUDICIAL ELECTIONS

The *only* means to judicial accountability.

Judges are often criticized for their decisions and should be as their decisions affect the legal rights of others. They should interpret, not write the law. Judges who make poor decisions should be held accountable.

Here are some recent decision of the Minnesota Supreme Court. After reading these decisions, we hope you will be ready to –

VOTE FOR GREG WERSAL

ABORTION

The Legislature had passed laws prohibiting the use of public funds to pay for abortions. In 1996, the Minnesota Supreme Court ruled that the State must use welfare funds to pay for abortions. This is directly contrary to the U.S. Supreme Court, which stated, "When an issue involves policy choices so sensitive as those implicated by public funding of nontherapeutic abortions, the appropriate forum for the resolution in a democracy is the legislature." In other words the court should defer to the Legislature. The dissenting judge remarked the Court "abandons all vestige of neutrality" in its pro-abortion stance. (Doe v. Gomez)

ADOPTION

In 1996, the Minnesota Supreme Court interpreted a statute effecting adoptions throughout the state. The statute stated that a natural father who failed to act within 90 days of a child's birth to state his intention to retain parental rights "shall lose parental rights". Because the Court found that language was not clear the Court held that the father's parental rights were not terminated. The dissenting judge stated, "The statutory language is neither ambiguous nor confusing." (In the matter of the Paternity of J.A.V. and Conrad Hisgun)

CRIME

The Minnesota Supreme Court

[Remainder Of Flyer Unreadable As
Entered In The Lower Court]

GREGORY WERSAL'S
CAMPAIGN FOR JUSTICE
(612) 546-3513

DEPO. EXHIBIT 4

JUDICIAL ACTIVISM IN MINNESOTA

Recent Minnesota Supreme Court Cases

The often condemned activism of judges in Federal courts has spread to our judges in state courts throughout the nation. In the last 6 months, the Hawaii Supreme

Court using the Hawaii Constitution ruled the state must recognize gay marriages.

Minnesota is no different. Our Minnesota Supreme Court also legislates from the bench. Here are just a few examples of recent judicial activism.

ABORTION

The Legislature had passed laws prohibiting the use of public funds to pay for abortions. In 1996, The Minnesota Supreme court ruled that the State must use welfare funds to pay for abortions. This is directly contrary to the U.S. Supreme Court, which stated, "When an issue involves policy choices so sensitive as those implicated by public funding of nontherapeutic abortions, the appropriate forum for the resolution in a democracy is the legislature." In other words, the Court should have deferred to the Legislature. The dissenting judge remarked the Court "abandons all vestige of neutrality" in its pro-abortion stance. (Doe v. Gomez)

ADOPTION

In 1996, a Minnesota Supreme court ruling interpreting a statute has placed in jeopardy adoptions throughout the state. The statute stated that a natural father who failed to act within 90 days of a child's birth to state his intention to retain parental rights "shall lose parental rights". Despite the clear language used by the Legislature, the Court held that the Father's parental rights were not terminated. (In a matter of the Paternity of J.A.V. and Conrad Hisgun)

CRIME

The Minnesota Court held that a motorist has a right to consult with an attorney before deciding whether to take a breath test for alcohol, striking down the procedure established by the Legislature. The dissenting judge argued the Court was legislating from the bench: "My role . . . as a judge of the Minnesota Supreme Court is not to decide whether the legislature's policy decision would have been my legislative choice." (State v. Barsnes)

CRIME

The Minnesota Supreme Court ruled that an in-custody confession must be tape recorded or it would not be allowed into evidence. What this means is that a criminal's confession to the police will not be used against him if the police did not tape record it. Should we conclude that because the Supreme Court does not trust police, it allows confessed criminals to go free? (State v. Scales)

CRIME

In 1996, the Minnesota Supreme Court ruled that a criminal defendant has the right to a sentence outside that provided for in law by the Minnesota Legislature. The Legislature recently recommended sentences more severe in an effort to get tough on crime. The Supreme Court's ruling will allow criminals to receive sentences more lenient than that provided for by the Legislature. (State v. Givens)

CRIME

The Legislature passed laws providing for more severe penalties for those who sold crack than those who sold powdered cocaine. The Minnesota Supreme Court struck down these penalties due to the disproportionate impact on blacks. This action is directly contrary to the opinion of the U.S. Supreme Court. The dissent noted that the law passed by the Legislature did not have a discriminatory purpose, but had a valid purpose in providing a more severe penalty for crack, which is a "more highly addictive drug than cocaine in the powder form" no matter whether it is sold or used by whites or blacks. (State v. Russell)

SEXUAL ABUSE

The State Legislature passed a law to give more time to victims of sexual abuse to bring forward legal actions. In 1996 the Minnesota Supreme Court interpreted this law in such a way as to possibly eliminate hundreds of pending or anticipated sexual abuse cases before they even go to trial. Ember Reichgott Jung, Assistant Majority Leader in the Minnesota Senate and author of the Statute of Limitations law, stated "The Court appears to have over-stepped its Constitutional authority in significantly rewriting the law . . . while the [Court] may not have agreed with the Legislature's approach, the Court does not have the authority to rewrite a statute that is clear on its face." (Blackowiak v. Kemp)

WELFARE

The Minnesota Supreme Court struck down, as a violation of the Constitutional right to travel, a state law that limited welfare benefits. The purpose of the law was to prevent people from moving to Minnesota only to collect the higher welfare benefits paid in this state. The Court should have deferred to the Legislature. It's the Legislature which should set our spending policies. (Mitchell v. Steffen)

[Illegible]

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